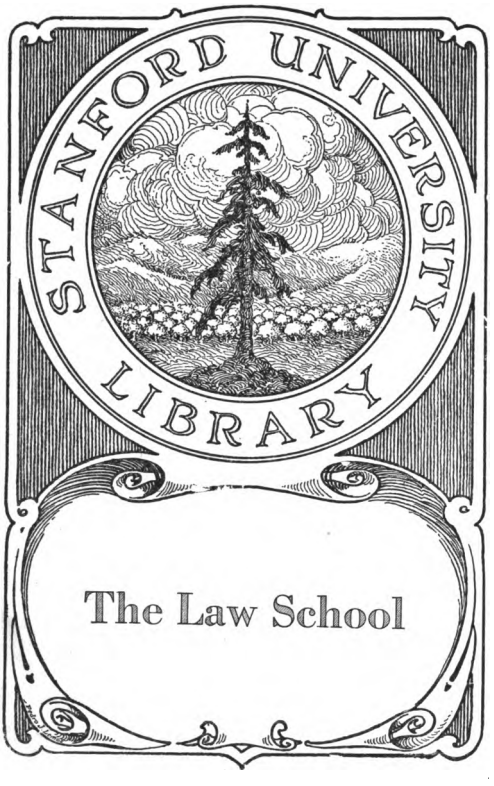

REPORT

OF THE

FOURTH ANNUAL MEETING

OF THE

STATE BAR ASSOCIATION

OF INDIANA

HELD AT INDIANAPOLIS, JULY 10 AND 11, 1900

PUBLISHED
BY ORDER OF THE ASSOCIATION
1900

THE HOLLENBECK PRESS
INDIANAPOLIS

ARTICLES OF ASSOCIATION

OF THE

STATE BAR ASSOCIATION OF INDIANA

I. The name of this association shall be "The State Bar Association of Indiana."

II. The objects of this association shall be: To advance the science of jurisprudence, promote the administration of justice, uphold the honor of the profession of the law, and encourage social intercourse among the members of the bar of the state of Indiana.

III. Any person shall be eligible to membership in this association who shall be a member in good standing of the bar of the state of Indiana.

IV. There shall be elected by ballot annually the following officers of this association:

A president, a vice-president, a secretary and a treasurer.

The following committees shall be annually appointed by the president for the year ensuing:

On jurisprudence and law reform, consisting of thirteen members, one from each congressional district.

On judicial administration and remedial procedure, consisting of thirteen persons, one from each congressionl district.

On legal education and admission to the bar, consisting of thirteen persons, one from each congressional district.

On publication, consisting of thirteen persons, one from each congressional district.

On grievances, consisting of thirteen persons, one from each congressional district.

On admission of members to the association, consisting of one person from each judicial circuit of the state.

A committee of three, of whom the secretary shall always be one, shall be annually appointed by the president, whose duty it shall be to report to the next meeting of the association the names of all persons who shall have died during the year, with appropriate notice of the deceased.

There shall also be an executive committee, consisting of the president, the secretary, the treasurer (all of whom shall be *ex officio* members), together with four other persons to be annually chosen by the association. The president shall be chairman of the executive committee. The executive committee shall select the persons to make addresses and read papers at the next annual meeting of the association, and fix the time and place of the annual meeting of the association, and have charge of its business and prudential affairs.

There shall also be such special committees appointed by the president or selected by the association as may be deemed necessary.

A majority of those members of any committee, including the executive committee, who may be present at any meeting of the committee, shall constitute a quorum of such committee for the purpose of such meeting.

V. All nominations for membership of the association shall be made in writing to the committee on membership; the latter committee shall, by ballot, determine the fitness of all persons presented; when such committee has approved of a name presented, it shall report such person to the association, who shall thereupon become a member: *Provided, however,* That if any member of the association demand a vote upon any name thus presented, the association shall vote thereon by ballot, and five negative votes shall be sufficient to reject such person.

VI. By-laws may be adopted at any annual meeting of the association by a majority vote of those present. It shall be the duty of

the executive committee first chosen, without delay, to frame suitable by-laws, which shall be in force until rescinded by the association.

VII. Each member of the association shall pay five dollars to the treasurer as annual dues, and no person shall exercise any privilege of membership who is in default. The time of payment and mode of enforcing the same shall be provided for by the by-laws.

VIII. The president of the association shall open each annual meeting with an address.

IX. The association shall meet annually at such time and place as the executive committee may select, and those present at such meeting shall constitute a quorum.

X. All the persons signing and acknowledging these articles, and all the persons duly elected to membership of the association, shall become members upon the payment of the annual dues for the current year.

BY-LAWS

OF THE

STATE BAR ASSOCIATION OF INDIANA

PRESIDING OFFICERS.

I. At all meetings of the association the president, or in his absence the vice-president, or in the absence of both of these any member chosen by the association, shall preside.

ORDER OF BUSINESS.

II. At each annual meeting of the association the order of business shall be as follows:

1. Address by the president of the association.
2. Annual address.
3. Reading minutes of preceding meeting.
4. Report of executive committee.
5. Report of treasurer.
6. Report of committee on jurisprudence and law reform.
7. Report of committee on judicial administration and remedial procedure.
8. Report of committee on legal education and admission to the bar.
9. Report of committee on publication.
10. Report of committee on grievances.
11. Report of committee on admission of members of association.

12. Election of members.
13. Report of committee on obituary notices.
14. Report of special committees.
15. Miscellaneous business.
16. Reading papers.

The order of business may be changed by a vote of a majority of the members present.

The usual parliamentary rules and orders shall govern the meetings of the association except in cases otherwise provided for by the constitution or by-laws.

SECRETARY.

III. The secretary shall keep a record of the proceedings of all meetings of the association, the proceedings of the executive committee, and of all matters of which a record shall be ordered by the association. He shall notify the officers and members of committees of their election or appointment, shall issue notices of all meetings, and in case of special meetings shall add a brief note of the object of the same.

He shall furnish the treasurer the names of all persons newly elected to membership.

He shall be keeper of the seal of the association.

THE TREASURER.

IV. The treasurer shall keep at all times a complete roll of the members, and shall notify new members of their election. He shall collect, and, under the direction of the executive committee, disburse all funds of the association, and keep an account in books belonging to the association of the receipts and expenditures of moneys. At the annual meeting of the association he shall make a report of the receipts and disbursements of the association, together with any suggestions he may think proper to be made.

THE EXECUTIVE COMMITTEE.

V. The executive committee shall meet before each annual meeting, and at such other times as the chairman of the committee shall indicate by call. This committee shall report at each annual meeting its doings, and make such suggestions to the association as, in its opinion, require the action of the association.

COMMITTEE ON ADMISSIONS.

VI. The proceedings of the committee on admissions shall be secret and confidential. They shall report at each annual meeting the names of those recommended for membership. This committee shall meet the day before each annual meeting, and at such other time or times as they may be called together by the chairman.

DUES FROM APPLICANTS FOR MEMBERSHIP.

VII. When the committee on admission of members has approved the name of an applicant for membership in the association, the treasurer shall promptly notify such person of the action of the committee; and such person shall, upon this notice, remit to the treasurer five dollars as annual dues for the current year. If the association at its next annual meeting rejects such candidate, the treasurer shall refund said sum.

ANNUAL DUES.

VIII. The annual dues shall be payable at the annual meeting, in advance. If any member neglects to pay them for any year at or before the next annual meeting, he shall cease to be a member. The treasurer shall give notice of this by-law within sixty days after each meeting to all members in default.

OTHER STANDING COMMITTEES.

IX. Each of the other standing committees shall meet on call of the chairman of the same.

COMMITTEE ON GRIEVANCES.

(As amended July 10, 1900.)

X. Whenever any complaint shall be preferred against a member of the association for misconduct in his relations to the association, or in his profession, the person or persons preferring such complaint shall present the same to the committee on grievances, in writing, subscribed by the complaining party, plainly stating the matter complained of.

If the committee is of opinion that the matters therein alleged are of sufficient importance, it shall cause a copy of the complaint, together with a notice of not less than thirty days, of the time and place when the committee shall meet for the consideration thereof, to be served upon the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him; and it shall cause a similar notice to be served on the party presenting the complaint. At the time and place appointed, or at such other time as may be named by the committee, the member complained of may file a written answer or defense, and the committee shall proceed to the consideration of the case upon such complaint and answer, or upon the complaint alone if no answer is interposed.

The complainant and the member complained of shall each be allowed to appear personally and by counsel, who must be members of the association, and shall produce their witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee may summon witnesses, and, if such witnesses are members of the association, a neglect or refusal to appear may be reported to the association for its action.

Before the trial shall commence, the member complained of may object peremptorily to any one or more of the committee, not exceeding three; and the places of those objected to shall be supplied, for the purposes of trial, by appointment by a majority of the remaining members of the committee who are in attendance.

The committee, of whom at least seven must be present at the trial, except that a less number may adjourn from time to time, shall hear and decide the case thus submitted to them, and shall determine all questions of evidence.

If it finds the complaint, or any material part of it, to be true, it shall so report to the next annual meeting of the association, with its recommendation as to the action to be taken thereon, and, if requested by either party, may, in its discretion, also report the evidence taken or any designated part thereof.

The association shall thereupon proceed to take such action on said report as it may see fit: *Provided, however,* That no member shall be expelled unless by the vote of two-thirds of the members present and voting.

Whenever specific charges of fraud, or gross unprofessional conduct, shall be made in writing to the association by a reputable person against a member of the bar not a member of the association, or against a person pretending to be an attorney, practicing in this state, said charges may be investigated by the committee on grievances; and if, in any such case, said committee shall report in writing to the executive committee that, in its opinion, the case is such as requires further investigation or prosecution in the courts, the executive committee may appoint one or more members of the association to act as prosecutor, whose duty it shall be to conduct the further investigation or the prosecution of such offender, under the instructions and control of the committee on grievances.

Whenever any complaint shall be made in writing to the association concerning any other grievance touching the practice of law or the administration of justice, the committee on grievances

shall make such preliminary investigation into the same as it may deem necessary in order to determine whether it is expedient that any further action shall be taken thereon. Should such further action be, in its opinion, expedient, the committee shall report in writing to the executive committee that, in its opinion, the charge or charges are of such a character as to require further investigation. Thereupon the executive committee may direct such further investigation by the committee on grievances, or otherwise, as it may deem most suitable to the case. Upon the termination of such investigation, a report thereon shall be made to the executive committee, and if the said committee shall find the complaint or any material part of it to be of such a nature as to require action by the association, it shall so report to the association, with its recommendation as to the action to be taken thereon, and it may also report the evidence taken, or any part thereof.

The reasonable disbursements of the committee on grievances for expenses incurred in any trial, prosecution or investigation may be paid out of the funds of the association under the direction of the executive committee.

All the foregoing proceedings shall be secret, except as their publication is hereinbefore provided for, unless otherwise ordered by the association by a two-thirds vote.

XI. Terms of officers shall begin on the day following the adjournment of the annual meeting at which they are elected.

XII. These by-laws may be amended at any annual meeting of the association by a vote of two-thirds of those present.

TRANSACTIONS

OF

THE FOURTH ANNUAL MEETING

OF

THE STATE BAR ASSOCIATION

OF INDIANA

HELD AT INDIANAPOLIS, JULY 10 AND 11, 1900

MORNING SESSION.

TUESDAY, July 10, 1900.

The meeting was held in the senate chamber of the Indiana legislature, and was called to order by the president, Robert S. Taylor.

THE PRESIDENT: I have the honor to announce the opening of the fourth annual session of the State Bar Association of Indiana. I believe the first thing in order strictly is the reading of the minutes of the last session.

THE SECRETARY: The minutes have been printed, and a copy furnished to every member of the association.

THE PRESIDENT: Will the association consent that the minutes stand approved without reading?

By consent the reading of the minutes was dispensed with.

THE PRESIDENT: The next thing in order, gentlemen, is the address of the president.

JUDGES

ADDRESS BY THE PRESIDENT, ROBERT S. TAYLOR.

I have chosen as the theme of my address on this occasion the subject of judges.

I shall approach it in a slightly unusual way, for which I have to crave your indulgence, and, perhaps, a little later, your forgiveness. It is my conviction that this great field of study has not in the past yielded the fruit of knowledge which it might, for want of classification. Every other subject of human investigation has been systematized to a high degree of perfection. All other animals have been arranged in orders, genera, species, groups, so that each individual has its place as distinctly defined as a town on a map. In making these classifications the most minute characteristics of individuals are utilized for distinction. A marked peculiarity of head, foot, backbone, tail, fin, feather, or voice, is enough to differentiate a species.

It is with the hope of introducing some similar principle of order into judicial science that I have undertaken this study. In the performance of my task it is necessary, of course, to use a learned nomenclature. Large and impressive words are the uniforms in which genera and species are clothed.

The broadest division of which anything or kind of things is possible is along the line of desirability—into the desirable and the undesirable. The Dutch botanist saw this principle clearly when he divided the whole vegetable kingdom into two classes—cabbage and weeds; the desirable and the undesirable. If we place all judges in a common genus, *Judex,* its species will naturally arrange themselves along a similar line. It does not matter for the purpose of the merely scientific study which we are about to undertake on which side of the line we begin. But there are reasons why the present is a favorable occasion for the consideration, first, of the

species designated by the negative adjective—the undesirable division. No attachment for contempt runs in this assembly. There is no clerk here to enter up fines. There are no judges judicially present.

I make bold, therefore, to begin, after this little introduction, with the discussion of a topic which I could not very well announce suddenly, nor without some preliminary explanation of its reasonableness and timeliness and probable usefulness, and which I may define as "Some undesirable species of the genus *Judex.*"

Among these, the first place justly belongs to a species with which many of us have had some acquaintance without desiring more. I refer to the well-known *Judex ignoramus.*

This species of judge has an extensive habitat, being found occasionally in all parts of the country, usually at rather low elevations, but occasionally on higher ground. It flourishes most numerously, perhaps, in thin soils which are deficient in that element of fertility called salary. But this is by no means universal. It finds a place not infrequently in localities which ought to produce a better specimen of the genus. Like a poet, this judge is born, not made; that is, not successfully made—not made according to specifications; not finished.

The *Judex ig.* is generally a good fellow, not wanting in industry, ready to hear, and desirous of rendering decisions which will please both sides to the controversy, the general public, and the supreme court. No judge ought to be expected to wish more. His presence on the bench has the good quality of being a powerful stimulant to industry and research on the part of the bar. In trying cases before him, you will find it necessary to go to the bottom of everything. You must give him to understand that you appreciate fully the novelty and difficulty of every question you present to him; cite authorities and text-books in stunning array, and argue the point at length. You will reap your reward, perhaps, when the court, after due reflection, decides, as you have contended, that

each partner in a firm is personally liable for the debts of the firm, or some other equally abstruse proposition of law.

A remarkable circumstance to be noted in this connection is, that while it would seem that the characteristics of this species ought to be reasonably easy of determination, the question is often one of violent difference of opinion in a given case. You will see two lawyers who have just tried a case as opposing counsel, and so have had what would seem to be the best possible opportunity to observe the judicial qualities of the court, expressing diametrically opposite views in regard to the judge. One will not only assign him a place in the species *Judex ignoramus,* but will declare, with profane emphasis, that he is as rank a specimen as ever sat on the bench of that ignoble variety of the species, *asinorum Dogberrius;* while the other will insist with equal strenuousness that he belongs to that splendid species *Judex doctus Danielli.* Such are the difficulties which attend the work of scientific classification in all departments of human study.

Another species of judge, scarcely less undesirable than the one which I have been describing, is *Judex doctissimus,* or the judge who knows too much.

It is the fashion of this species to decide cases, not on the points which have been argued by counsel, but on points which they missed and which he has thought of. You will know him on the bench when you are arguing a case before him by a far-away look in his eye which signifies that he is not attending to what you are saying, but thinking of what he will say when you get through; how he will put you to shame by delivering an opinion in which he will lay aside with casual remark the argument which you have made and decide the case on what he conceives to be the real questions involved.

One of the embarrassments of practicing before this species of judge is, that it is often more disastrous to win the case than it would be to lose it. The court will make rulings on the admission of evidence and give instructions to the jury which lay on you a

heavier burden in the supreme court than all the difficulty of your own case plus all the points made by the other side. Then when you are beaten there, you are miserably aware that the judge who got you into the trouble looks on you with contempt, and something in your client's manner conveys the impression that he, too, has discovered that he retained the wrong lawyer.

It is far more difficult to handle the judge of this species than to get along with *Judex ignoramus.* By unremitting diligence in the kindergarten method you can usually steer *him* aright on easy questions. On hard questions it is, of course, a stand-off between you and your adversary, than which there are many worse things in the law.

But how to deal with *Judex doc.* is often a problem of the greatest nicety. The temptation is always strong to keep on the good side of the court, especially when the court is on your side; and a lawyer will many times take chances put upon him from the bench which he would not think of taking for himself. But there are times when it becomes the serious duty of counsel to assume without shrinking the responsibility which belongs to him, and say to the judge that a ruling which he proposes to make or an instruction which he proposes to give, although favorable in its immediate tendency, is doubtful and dangerous in point of law, and ought not to be made or given.

I mention next a species of judge found occasionally in all parts of the country and at all elevations, and highly undesirable wherever found. I refer to *Judex somniculosus,* or the judge who goes to sleep on the bench.

In all the varied experiences of a lawyer, there is no more embarrassing task than to address an argument to a judge who is asleep. It is not so bad to go on with a jury trial while the court takes a nap. Of course, it detracts something from the dignity of the proceedings. The boys will snicker, and the jurymen nudge

each other, and a general atmosphere of suppressed levity will pervade the court room, especially if the judicial sleeper reaches the snoring point. But if the lawyers will tacitly agree, as they often do, to pass by any controversy which arises until the judge wakes up, the examination of the witnesses can go on without serious prejudice for a considerable time.

There is no such relief, however, for the counsel who is addressing the court. I need not dwell on the harrowing scene. We have all been there. The artifices resorted to by the distressed advocate to awaken the court without letting the court know that he knew that the court was asleep—shouting a few words, then lapsing into sudden silence; slamming books; pounding the table; coughing violently—are not all these familiar tricks?

Of course, there are mitigations. There are speeches made to courts which are fit to be prescribed as soporifics, and there are court rooms from which fresh air is always sedulously excluded. In such cases the sleeping judge is often more sinned against than sinning.

At the same time there is matter in the business for just comment. A judge, as Shylock said of his countrymen, hath organs—stomach, liver, bowels, nerves; and he has no *ex officio* exemption from the operation of the common laws of nature because he sits to expound the common law of England. Heavy dinners, late hours and corporeal indulgences will tell on a judge as certainly as on any other son of Adam. Wakefulness on the bench is a judicial duty. Whatever abstemiousness of life, self-denial, or loftiness of resolution may be necessary for its attainment becomes, therefore, the duty of the man who holds the office. His oath to support the constitution of the state is an oath also to support his own constitution and keep himself clean and strong in body, and alert and vigorous in mind.

Another undesirable species of judge not infrequently occurring is *Judex procrastinatus.* The characteristics of this species must be carefully distinguished from similar appearances found in the

genus generally. It is not uncommon to find an imperfect development of a specific characteristic widely distributed among individuals of various species in any field of classification. Thus a judge of any one of the species named, or any other, may, on occasion, delay a decision with or without reason. It is only the judge who, by some mysterious law of being, requires a fixed period of incubation in order to hatch a decision that properly belongs to the species *Judex procrastinatus.*

The trial of a cause before such a judge is a sort of farewell performance, and the closing speech of counsel like a funeral oration. The record is delivered to the court, the lawyers gather up their papers and pass quietly out, while a subdued, it's-all-over feeling pervades the air. The old case has departed this life. It was once a center of living interests. It stirred the passions and animated the hopes of men. All that ends when the papers are handed up. The lawyers turn to new controversies and the litigants return to their avocations. Time passes by. Other things claim the attention of parties. Their resentments subside; their thoughts are absorbed by new schemes. It comes to a point, by and by, when nobody cares much whether the case is ever decided or not. It would be better, many times, that it should not be. Finally, like an umpire's decision after the game is over and the spectators have all gone home, the judge hands down an opinion. Of course, there is nothing gained, but a great deal lost, by this habitual delay. A man has to walk just as fast to keep within a mile of the procession as to keep in it; and in the case of a judge he walks at great disadvantage. Taking up a record for examination months after its submission, he necessarily finds that the vivid impressions which he had of the evidence, argument and authorities at the close of the hearing have faded away in greater or less degree. He must either re-examine the case, or decide it upon such impressions as he has retained. One course involves large additional labor for himself; the other additional risk of error.

Moreover, it is often the case that tardy justice is no longer justice. So dearly had this lesson been learned by our fathers in the generations which preceded the formation of our constitution that its framers made it one of its three cardinal requirements in regard to courts that justice should be administered "speedily and without delay."

Another undesirable species of judge is *Judex apiarius,* or the judge who keeps a bee.

The buzzing of this industrious insect has long been known to have a disturbing effect upon that tranquillity of mind which is essential to the proper discharge of judicial duty. It was so seriously regarded by the framers of our constitution that they expressly provided that a man elected to a judicial office should be ineligible to any other office of trust or profit than a judicial office during his judicial term. This vow of chastity every judge takes upon his induction into office, when he swears to support the constitution of the state.

In its legal efficacy this constitutional prohibition extends only to the *Apis gubernatorialis* and other varieties of the insect which sing to the ear of habitations in the state house and other happy places in the good state of Indiana. Owing to the peculiar structure of our composite system of government, the prohibitions of our state constitution are not obligatory upon the United States, and hence this provision is legally ineffectual against that most insidious bee of all the tribe—the *Apis Washingtoniensis.* The judge who wants to go to congress finds no legal obstacle in our constitution. At the same time, the spirit of the constitution, the reason of its provisions, apply with no less, but with more force to this intrusion of political ambition into the sacred chambers of the temple of justice than to any other. I must admit that so many good men—judges against whose snow-white probity no speck of criticism ever found lodgment, have done this thing—have gone or tried to go from the bench to congress, that it would be unjust to speak

of it as a thing which may not be done by the best of men. Nevertheless, from that high elevation where students and philosophers dwell, and from which I speak at this moment, it must be said that a judge who looketh upon an office to lust after it hath broken the constitution already in his heart.

While our constitution is careful to say to a judge that he shall not go into politics while on the bench, its establishment of an elective judiciary makes it necessary that he shall go into politics in order to get there; which seems like a shade of inconsistency in that noble instrument. This departure in the method of selecting judges has been followed in so many of the states that it may be regarded as an accomplished revolution in constitutional history. It was accepted at first with many misgivings. The objections to it on theoretical grounds are of the gravest character. It seems inconsistent with the dignity and sanctity of the office that it should be sought by the methods employed in the scramble for other offices —the solicitation, intriguing, wire-pulling and log-rolling, by which nominations are obtained. It would seem also to be inevitable that the animosities of party contest will follow the successful candidate to his place and embarrass him in the discharge of his duty there. That a judge holding his seat by the suffrages of part of his fellow-citizens and against the wish and over the opposition of another part of them should not only be an impartial judge, but should be so confidently and universally believed to be impartial that the whole community should rely on his impartiality without question, would seem to be beyond the possibilities of human nature.

Nevertheless, we have achieved that result with a surprising degree of success. Not perfect success, of course. There is now and then a trace of political influence in the judgments of courts, but not enough to affect sensibly the general administration of the law. We have elected our judges in Indiana for half a century. I know of no reason to believe that justice is administered in our state with

any less purity or impartiality or ability, on the whole, than in any other state of the Union, or country in the world. That this should be so seems to me to be a demonstration of the existence of a high degree of moral soundness in society and large capacity for self-government among the people. It is more chivalrous than chivalry ever was. The voters of each party say to the candidate on the other side, in meaning, "We will fight you, beat you if we can; but if you should be elected, we are from that moment your loyal constituents, friends and defenders, and you to us the honored, respected, impartial judge." And they keep the compact. Popular government has no nobler achievement to show than this.

Since writing what I have read, I have noticed that at a bar association meeting in a neighboring state a few days ago a paper was read advocating the appointment of judges by the executive. I once held that view, but I do not now.

The impossibility of a return to the appointive system when once it has been abandoned deprives the question of all practical interest for us; but it would be uncomfortable to feel that we are living under a defective system, however helpless we may be to change it. There is an unmistakable tendency in this country to enlargement of the direct powers of the people in all the affairs of government. The people have found by experience that the way to enlarge their power is not to limit the powers of their representatives, for that is but to limit their own powers; but to increase the power of their representatives and at the same time make them more directly and quickly responsible to their creators, the people. This is exemplified most strikingly, perhaps, in the tremendous increase in recent years of the power of the president of the United States. When the constitution was formed, the people were afraid of the president. Some members of the convention would have made him scarcely more than a figure-head. But the people have learned that power lodged in his hands is more nearly in their own hands than that lodged anywhere else. If he does not execute their will,

they can put him out in short order and put in some one who will do their bidding. They have no such direct control of congress. Every member of the lower house is entrenched in his district; each senator in his state. But the whole people hold the president in the hollow of their hand. Hence they have been quite content to see him assume one function of government after another, until he is, for the brief period of his term, the most powerful potentate in the civilized world.

The same tendency exists in the organization of municipal governments, as is shown in the increased power of the mayor under recent charters. What the people want is to make all their public officials responsible to them in the quickest and most effective manner. This they do by electing them by popular vote and for short terms.

But, we say to ourselves, ought that principle to apply to the judicial office? Ought a judge to be responsible to the people any more than to a king for his decisions? Why not? The people make the law in the first place. The judges flavor it in administration. And the flavor is often the more important part of it when it is reduced to practice. Shall the people have nothing to say about that?

It is quite natural to fear that elected judges will weakly yield to passing popular clamor in cases exciting great public interest. On this point, however, experience is the best argument, and by that test we know that elected judges are not often swept off their feet in that way. At the same time, the people do make their wishes and convictions felt on the bench. The inroads which have been made on the Dartmouth College case and on the old doctrine of liability for negligence of co-employes are illustrations. And who shall say that they have not been in the interest of justice? We are committed to the experiment of popular government for better or worse. It has some perils which we can not avoid. It has no security except in the final intelligence, patriotism and incorrupti-

bility of the people. The safest course is to make the most of that. Give the people fair, free and honest elections, and let them have the power.

At the same time there is another and sadder thought which is suggested by the subject. While our judges are able, in the discharge of their duties, to rise above all personal political considerations, as of obligation to friends or animosity toward adversaries, there are political exigencies—exigencies affecting great party interests, and through them great public interests, which have not always (shall I say never?) been excluded from the bench. I suppose no lawyer can recall without some discomfort the judgment of the electoral commission of 1877. It is not that we agree or disagree with its judgment. If we look closely into our own hearts we find a curious inconsistency within ourselves in respect to that tribunal and its decision. I never heard a man who voted for Hayes express any disapprobation of the views of its majority, and I never heard anyone who voted for Tilden express any dissent from the views of its minority. We all do just as they did. There is nothing left for us to say, except that it is such a pity that it had to be so. If only two of them could have exchanged places in the final division.

The lesson of it is, that, after all, there are around and about us forces which compel us in ways that we know not, and which are stronger at last than all our precedents and reasonings and philosophies. They mold the will of people, legislators, courts and governments with awful and irresistible power.

It would strike a man at first blush that the task of classifying the desirable species of judge would be an easier one than the converse, in which we have been engaged. Certainly it is a more gracious one. But you will see, on a moment's reflection, that it is also a more difficult one. The foibles and oddities of men are easily seized upon; their excellencies are broader and less capable of concise definition. Moreover, the quality of desirability is a

composite one, made up of many elements of excellence, while the presence of a single undesirable feature may be enough to justify a classification in the other division. Cyrano de Bergerac was without blemish except as to his nose. That was enough, however, to put him in a class by himself, and in the undesirable division.

Many of the good qualities, also, to which one's mind would turn in forming a classification so widely distributed that they cease to be distinctive. Thus a man would naturally suggest as the first to be named among desirable judges a species *Judex honestus.* But while there can be nothing more desirable than an honest judge, such a species would include almost the entire genus, and hence would signify nothing as a basis of classification. I shall content myself, therefore, for the present, with a reference to two species of judge differentiated by qualities sufficiently striking and characteristic to distinguish them from their fellows at large and give them place in the desirable division.

One of these is a very choice and somewhat rare little species of judge which may be designated as *Judex cordis creduli,* or the judge who believes things. I do not mean by this the credulous judge, nor the judge who believes everything, but the judge who has a place about him where, upon evidence, he exercises the pure function of belief, and who acts upon that belief. I differentiate this species from the genus by the fact that most judges reach conclusions of fact, not by this simple process of belief, but by a calculation of probabilities based on the application of legal formulas. There are certain established rules of evidence which, taken together, may be made to cover in a mechanical and arbitrary way every possible issue of fact, like an engineer's formulas for bridge building. There is the burden of proof, the number of witnesses, their supposed interest, their means of knowledge, etc., etc., out of which a judge can construct a finding of fact with no more personal conviction of truth within him than there is in a telegraph pole as to the truth of the messages which pass by it.

Two unreported cases which came under my personal observation some years ago will illustrate my meaning.

A grocer brought suit to recover twelve cents for two pounds of crackers. The case was heard on appeal from a justice of the peace by an exceptionally learned, able and upright judge. The plaintiff testified that he sold the crackers to the defendant, and had never received payment for them. The defendant testified to the following facts: He had been down town with his wife and was driving home, when, just as they were passing the plaintiff's grocery, she remarked that she had forgotten to buy some crackers needed at home. He said, "Here is a grocery; I will step in and get them," and did so. After they had been done up, he found he had no money. He knew the grocer, and the grocer knew him, but he never made any other purchase there before nor afterward. He said to the grocer, "I will hand the crackers to my wife and go immediately and get the money and pay you; don't charge them." A few minutes later, when he came back with the money, the grocer was out. He handed the money to a clerk, saying, "This is for two pounds of crackers which I bought a little while ago; they are not charged; tell Mr. F. that I have paid you." The clerk testified that nothing of the kind ever occurred to his knowledge. That was all the evidence. All the parties were of unimpeachable character.

In deciding the case, the judge said: "This is a suit for goods sold and delivered. The defendant admits that he bought and received the goods, and pleads payment. The burden of proof is upon him to establish that defense by a preponderance of evidence. He swears that he paid the plaintiff's clerk; the clerk swears that he did not. The defense of payment is therefore not supported by the necessary preponderance of evidence, and the finding must be for the plaintiff."

The other case was an indictment for gambling heard without a jury by another judge. It was tried shortly after the enactment

of our statute permitting defendants in criminal cases to testify. There were two defendants. They took separate trials, and each testified for himself and called the other as a witness. The only witness for the state was a green country boy who was present at the game. At the conclusion of the evidence the attorneys for the defendants leaned back in their chairs and with smiling confidence submitted the cases without argument.

The judge said: "It is true that in each of these cases this young boy is contradicted by two witnesses; but I am bound to say that I believe the boy, and I do not believe the other witnesses: there will be a finding of guilty in each case."

One more such case comes to my mind, heard by still another judge. It was an indictment for selling a glass of beer without a license. The alleged purchaser was the only witness for the state, and the only witness examined on either side. He testified that he ordered the beer and drank it, but could not remember whether he paid for it or not. The prosecuting attorney examined him at great length—turned the examination into a cross-examination. He admitted that he might have paid for the beer; he would not swear that he did not; he knew of no reason why the saloonkeeper should give it to him; he had no account there; he was quite sure it was not charged to him; he usually had money with him to pay for things that he bought, etc., etc. As the examination progressed it was disclosed that the witness was something of a philosopher and belonged to the subjective school. He had some doubt about the real existence of matter. The sensation of beer running down his throat might be mere imagination. It might be beer, or it might be something else, or it might be nothing. It was impossible to be sure on a point like that. He supposed that he held a glass tumbler in his hand and drank beer from it, but that again might be a delusion. All he could state positively was that he had certain sensations. It was possible that there was no such thing in the universe as glass, or beer either.

The judge said: "The state must prove beyond a reasonable doubt that the averment of the indictment that the defendant sold the beer and received payment for it is true; the witness swears in form of words that he cannot remember whether he paid for it or not. It would seem at first sight that the proof fails to support the allegation. Nevertheless, I believe that the witness paid for the beer; I believe it from his testimony; I have not a shadow of doubt about it; I must find the defendant guilty."

You see what I mean. In the cracker case the judge weighed the evidence just as the grocer weighed the crackers—by scale and rule; and that process led him into error. A little shock of surprise ran around the court room when he delivered his decision. In each of the other cases the judge simply received the testimony with open heart and let it have its unconstrained effect on his belief. Those who had heard the proofs approved the decision. In each of the three cases a reversal of the method applied in the mind of the judge would have reversed the result.

Another species of judge closely akin to the one last mentioned may be fitly named *Judex animi aperti simplicis.*

Among the frequent limitations of our human nature are mental idiosyncracies or habits which interfere with the perfect communication of our thoughts to one another. More than half the controversies in life come from mere misunderstandings. A judge on the bench, as the arbiter of controversies, has need, first, to understand what they are about, what are the claims of the parties and the arguments by which they are supported. All this information comes to him by communication from the witnesses and counsel. I speak now of that which comes from counsel.

Every lawyer has his own way of thinking and of expressing his thoughts. He has his own field of illustration, his own stock of legal phrases, his own fashion of word-order and sentence-building. In order to understand a lawyer perfectly, the judge must fall in with his way and see things as he sees them. If the judge has his

own set mental gait, and can take no other, and the lawyer has a different one, and can take no other, their communication is like that of men speaking different tongues, each with an imperfect understanding of the language spoken by the other.

The most trying experience which a lawyer can have is to lose his case and feel that it was because he was not understood. It exasperates you, when you read the opinion, to find that the court has decided the case without deciding the question; that the question stated by the court, and upon which the decision is made to turn, is not the question which you argued, but another question extracted from the record by the judge himself. Another lawyer, reading the opinion, will set you down an ass for trying to maintain such propositions as the court imputes to you. These are the things that make a lawyer angry, and tempt him to make bitter remarks about the court.

In nine of these cases out of ten the trouble arose from a want of mutuality of understanding between court and counsel. The case was like a puzzle picture. The lawyer saw in it a man in the shrubbery; the judge saw no man, but saw a woman in the clouds. What the lawyer said about the man the judge applied to the woman, and it was a misfit, of course.

The species of judge I am now describing is happily free from these embarrassments. He has no legal prejudices; no quirks in his head; no intellectual astigmatism. He has no favorite arguments or illustrations; his mind follows no ruts. He takes your arguments as you intend them; not in some other sense, distorted by the crimping machinery of his own brain.

It is a great happiness to practice before such a judge. It is a delight to be understood anywhere, by anybody, about anything, but most of all to a lawyer by the court. The highest compliment a lawyer can receive is the recognition of his argument. It stimulates him to his best, and lightens and brightens his labor in office and court room. The court may decide against him, but the con-

sciousness that he was understood, that his arguments were duly appreciated and fairly weighed, takes the sting out of defeat.

These two qualities—a mind open to argument without internal obstruction, and a heart sensitive to the truth of facts, as a photographer's plate to the light—*Judex animi aperti simplicis* and *Judex cordis creduli* in one, fill my ideal of judicial wholesomeness and loveableness beyond any other attributes that adorn the bench. Judges will differ in greatness as the stars differ in glory. There is no help for that. But as the least star may shine in its place with as clear and pure light as the greatest, so judges may and do possess these perfections of judicial character irrespective of their stellar magnitude.

It is manifest to you, of course, that I have been but playing with the fringe of a great subject; looking for pegs whereon to hang little criticisms which lawyers take a malicious pleasure in making when they have the judges at a disadvantage. And, by the way, that is another curious phenomenon. A judge is only a lawyer in a new role; a lawyer wiser grown. And every lawyer is a judge in embryo; no, not that—it is a long road from that state—he is a judge in the chrysalis, from which emergence is easy. And yet the bench and the bar stand apart and talk about each other as though they were rival professions, like two schools of medicine. What I have said will be recognized by the astute members of this association as a mere publication of views secretly entertained by the profession, but expressed usually only in the confidence of unrestrained intercourse.

The judge was the godfather of civilization at the beginning; he is the noblest production of its highest development now. Civilization began with the idea of rights. The assertion of rights necessarily begat disputes. The settlement of disputes by authority was the foundation of law.

The separation of the judicial office from those of the patriarch, the military chieftain and the lawgiver was a slow process. Then

came the long period of subjection, the centuries during which judges were the slaves and tools of tyrants; then the struggle for emancipation from that tyranny; and at last, the free and independent judiciary. The story of this evolution is the story of the rise and progress of civilization. At every step in the enlargement of the domain of freedom the judges on the bench have garrisoned the newly won territory. The right to a supreme and independent judiciary is the right preservative of all rights. Without this, no right is secure.

It has been with a consciousness of this fact that the people have striven in every movement for the betterment of their condition to elevate and purify and strengthen their judiciary. Especially is this true of our own great stock of human blood—the Anglo-Saxon. I have sometimes thought that the supremacy of that stock among men could be traced in large measure to four simple causes. For five hundred years we have eaten the best food which the earth produces—wheat and beef; that has given us the best brain, bone, muscle and nerve. We early learned the rudiments of parliamentary law—how to meet together, keep order, discuss and decide questions, and abide the result; that laid the foundation of constitutional government. The Latin nations have hardly learned that lesson yet. We early formed the habit of putting our money in bank, and thus multiplying the efficiency of capital by making it available, over and over, in loans. That laid the foundation of commercial greatness. And, finally, we secured the results of all these by a judicial system perfectly adapted to our uses; strong and yet elastic; conservative and yet progressive; independent and yet subordinate to the supreme authority of public opinion.

I am not able to conceive conditions more favorable to the breeding of judges of the highest type than those which have environed English and American judges for a century past, or, with only a little less emphasis, for several centuries past. These conditions have consisted, first, in their independence of executive or legis-

lative interference; and second, in the system of law which they have administered. It is not unnatural to imagine at first thought, as some do, that a system of law resting on precedents must necessarily be a harsh and arbitrary system. In fact, the contrary is the truth. Except in the rarest cases, a judge is never called on to act upon the authority of one precedent. He has to consider a number of them. Each one of these is tested by comparison with its precedents. It is the algebraic sum of all the precedents that constitutes the effective authority. This is only another name for the general state of the law, as ascertainable from all sources. In truth, the inquiry has that whole scope every time a legal question is proposed in an English or American court.

Such a system has, in its doctrine of *stare decisis*, a guaranty of the uniformity and permanence necessary to a certain degree of rigidity; and at the same time in the practical application of precedents, in their construction, analysis and comparison, especially in cases presenting novel and difficult questions, it has a large degree of flexibility. In the former of these characteristics the ordinary judge, in the discharge of his ordinary duty, finds plain and safe guidance; in the latter the great judge finds his opportunity. Rising upon occasion to a sublime height of observation he takes a topographic survey of the whole field. As the geodetic surveyor in his large calculations takes into account the curvature of the earth as well as his superficial measurements, the judge interprets *his* bench marks—the decisions—in their relation to the whole trend of human affairs; all social, commercial, political and moral conditions. On this broad foundation he builds a great decision, and from it the law takes a new departure. Nothing has been created; nothing destroyed—only a new and larger application of old and tried principles. The judge has done in the law what the inventor does in mechanics, who, using only the old wheels, levers, cams and pullies, gives to the world a new loom or a new locomotive.

We are to have at this meeting a paper on "The Law and the Striker." The time is urgent for the solution of that hard problem. It is such an occasion as I have alluded to, when Justice looks with wistful eyes for the coming of her prophets, and epoch-making decisions are at hand. The principles upon which it is to be solved appear as yet to be locked up in the storehouse of the common law, like unmined gold awaiting the pick and the drill. But they are there, and distinguished will be the services to the world of those lawyers and judges who shall discern and apply them.

Modern society is a web so vast and intricate that no one can trace its threads. Every man has some relations, not only with some others, but with all others. Every man has some rights, not only as against some others, but as against all others. Every man is at every step bound by many obligations to others and entitled to hold others bound by many obligations to him. The law envelops us all like an atmosphere at every moment of our lives.

The judge is the law made manifest in the flesh. His mouth is its oracle; his hand its hand. His power is omnipresent; no one can escape him. A man could not fall from the clouds without dropping into the jurisdiction of some judge. His power is omnipotent as human power can be. All the compelling agencies of society are his to command. The sword is at his call; the jail and the gallows exist to enforce his decrees. And yet, so perfectly have the judges fitted the law to society, and so easily does society wear the law as a garment, that only rarely are men conscious in their daily lives that there is any law. This is the highest possible test of the law's perfection and the perfection of its administration.

It is with a sense of the awful majesty and power of the law that we reverence its ministers and dignify their office. From the moment a judge mounts the bench he has a place a little apart from his fellows. Above all offices which men bestow on each other, his is the one of real veneration and real confidence. We scout the maxim

that the king can do no wrong, but we pin our faith to the belief that the judge will do no wrong, knowingly.

There is no relation among men more beautiful than the relation of confidence between the judge and the bar. Every trial brings to some lawyer the sting of disappointment. It may rankle for a day, but his faith survives it. He must trust the judge. If not, whom or what can he trust? As time rolls on, judge and lawyers come nearer to each other. They go through many hard fought struggles together. They learn each other to the core. What was confidence perforce at the outset becomes cherished faith, and all the bar are ready to say of the judge, as the Psalmist said of the Almighty—"Though He slay me, yet will I trust in Him."

THE PRESIDENT: Gentlemen, I have the pleasure to announce that we shall now listen to the annual address by Senator William Lindsay, upon "The Pacification of Cuba in its Legal and Consitutional Aspects," and I have great pleasure in presenting the Senator to you. [Applause.]

SENATOR LINDSAY: I shall follow the example of my distinguished friend who preceded me by reading the address that I have prepared.

THE PACIFICATION OF CUBA IN ITS LEGAL AND CONSTITUTIONAL ASPECTS

ANNUAL ADDRESS BEFORE THE INDIANA STATE BAR ASSOCIATION DELIVERED BY SENATOR WILLIAM LINDSAY, OF KENTUCKY, AT INDIANAPOLIS, JULY 10, 1900.

I thank the Bar Association of Indiana for the invitation to meet the representative lawyers of this great state on this interesting occasion, and assure its members that I appreciate more than I can express the compliment paid me in my selection to make this year's annual address.

Born in the Old Dominion, of which the Northwest Territory was once a dependency, and for nearly half a century a citizen of your sister state on the south side of the great river over which Indiana and Kentucky have concurrent jurisdiction, I feel that between myself and the bar of Indiana there exists a kind of geographical and professional relationship, and that in meeting you to-day I come not as a stranger, but as a neighbor, fellow-citizen and almost a kinsman.

On the fourth day of July one hundred years ago, Indiana became an organized territory. It then contained less than five thousand free male citizens. To-day more than ten million prosperous and happy people make their homes within the boundaries established by the act of congress that laid the foundations and established the name for the magnificent state of which you are honored representatives.

From the Ohio river on the south the newly created territory stretched northward to the British possessions, and on the west the Mississippi separated it from the then great Spanish North Amer-

ican empire. That empire has disappeared from the map of the world. Before the end of the first quarter of the present century Louisiana and Florida had passed to the United States, Mexico had asserted her independence, and the Central and South American states having successfully followed the example of Mexico, the flag of Spain for generations past has typified Spanish authority in the islands of the Mexican gulf and in no other portions of the new world. Within the last two years that once potent nation has parted with her sovereignty over those islands, and to-day no American country north or south acknowledges Spanish supremacy.

Porto Rico we have undertaken to govern and protect. We have made ourselves the provisional guardians of Cuba, and are engaged in preparing her people for self-government and national independence. For their ultimate benefit we have assumed a duty without precedent in history and unparalleled in national generosity and unselfishness. The legal, constitutional and international characteristics of that duty I propose to consider in your hearing to-day. I appreciate the delicacy attending the discussion of such a subject in this presidential year, but I shall avoid, as I may well do, everything tinged by party spirit or tending to the promotion of partisan interests or purposes.

Speaking to an assemblage of lawyers, whose profession teaches that the legitimate purpose of investigation is truth, and that propositions involving questions of constitutional and international law are essentially non-partisan, I shall consider the legal and constitutional aspects of our relations with Cuba with all the freedom that may be necessary to the full comprehension and correct appreciation of the principles on which we must rely for the justification of our present course, and by which we are to be guided in the execution of our voluntary intervention to secure to the Cuban people a constitutional government, republican in form, and stable and efficient in character, and this I shall do without fear of being mis-

understood, or of having my suggestions misapplied or misconstrued.

While Louisiana and Florida were still dependencies of the crown of Spain, an American statesman declared that "God and nature have destined both New Orleans and the Floridas to this great and rising empire. The natural bounds to the south are the Atlantic, the Gulf of Mexico and the Mississippi, and the world at some future day can not hold them from us." Within a few months after this prediction, it was partly verified, and in one respect more than verified, through the purchase of the French title to the Louisiana territory, the Mississippi becoming, not our western boundary, but from its source to its mouth an American highway, subject to our exclusive jurisdiction and control.

In 1819 we purchased Florida, and before the end of the first half of the nineteenth century our southern boundary extended from the Florida keys along the coast of the gulf of Mexico to the Rio Grande.

With the acquisition of Florida, Mr. Jefferson insisted that we should regard the gulf stream as our southern boundary, within which no hostilities by foreign countries could be tolerated.

Our ownership of Florida increased our interest in Cuba. Opposition to the control of that island by any other European power than Spain became universal, and as early as 1822 its independence and its eventual annexation to the United States was a popular idea with Cubans and with Americans.

Speaking of our peculiar relations to that island, John Quincy Adams, secretary of state, in his instructions to the American minister at Madrid, April 28, 1823, was moved to say that Cuba, from a multitude of considerations, was an object of transcendent importance to the commercial and political interests of our Union. That its commanding position with reference to the Gulf of Mexico and the West India seas, its situation midway between our southern coast and the island of Santo Domingo, its safe and capacious har-

bor of the Habana, fronting a long line of our shores destitute of the same advantages, the nature of its productions and of its wants, furnishing the supplies and needing the returns of a commerce profitable and mutually beneficial, gave it an importance in the sum of our national interests with which that of no other foreign territory could be compared and little inferior to that which bound the different members of the union together. Such were the interests of that island and of this country, the geographical, commercial, moral and political relations formed by nature, gathering in the process of time, and even then verging to maturity, that in looking to the probable course of events for the next half of a century, it was scarcely possible, in his judgment, to resist the conviction that annexation would become indispensable to the continuance and integrity of the union itself.

He expressed the opinion, however, that the time was not then ripe, and that the objections to the further extension of our territorial dimensions beyond the sea were at that time insurmountable, but he added that there are "laws of political as well as of physical gravitation, and if an apple, severed by the tempest from its native tree, can not choose but fall to the ground, Cuba, forcibly disjointed from its own unnatural connection with Spain, and incapable of self-support, can gravitate only toward the North American union, which, by the same law of nature, can not cast her off from its bosom."

President Monroe considered the capes of Florida and Cuba as forming the mouth of the Mississippi, as also the mouth of the Gulf of Mexico, and that the acquisition of Cuba was of the highest importance to our internal tranquillity and to our prosperity and aggrandizement. Spain, however, being unwilling to part with the last of her American possessions, and the United States having no disposition to acquire them by force, the policy was developed and steadily adhered to that, while we were willing for Cuba to remain a Spanish province, we never would permit its occupation by the

forces or agents of any other European power, on any pretext whatever.

That policy was so firmly established that in 1840 our minister at Madrid was authorized to assure the Spanish government that, in case of an attempt, from whatever quarter, to wrest from her the island of Cuba, she might depend on the military and naval forces of the United States to aid her in preserving or recovering it. It is needless, and it is not pertinent to the line of thought I desire to present, to enter on the inquiry why, by Spanish misgovernment, the United States were in the end compelled to intervene by force to terminate Spanish dominion in Cuba. During the long and bloody insurrection continuing from 1868 to 1878, we preserved the strictest neutrality and steadily refused to recognize the belligerency of the insurgents, though convinced of the justice of their cause and strongly impelled by the sympathy of our people, and by the dictates of humanity, to interfere in behalf of a pouplation condemned by our selfish but established policy to endure the evils of Spanish rule until they should become strong enough, by their unaided efforts, to throw off the Spanish yoke.

From the inception of the last insurrection until the attempts by Spain to suppress it were demonstrated to be futile and hopeless, our government remained faithful and steadfast to the policy of non-interference. Finally conditions so deplorable were reached that President Cleveland was constrained to put Spain on notice that we could not tolerate the indefinite continuance of a bloody contest, from which only the destruction of all government could be expected. In his last message that president said that "When the inability of Spain to deal successfully with the insurrection has become manifest, and it is demonstrated that her sovereignty is extinct in Cuba for all purposes of its rightful existence, and when a hopeless struggle for its re-establishment has degenerated into a strife which means nothing more than useless sacrifice of human life, and the utter destruction of the very subject-matter of

the conflict, a situation will be presented in which our obligations to the sovereignty of Spain will be superseded by higher obligations which we could hardly hesitate to recognize and discharge."

By the message of April 11, 1898, President McKinley said to congress that long delay had proved that the object for which Spain was waging the war could not be attained, and that the only hope for relief and repose from a condition which could no longer be endured was the enforced pacification of Cuba, and he asked congress to authorize him to take measures to secure a full and final termination of the hostilities between Spain and the people of Cuba, and to secure in the island the establishment of a stable government, capable of maintaining peace and tranquillity, and the security of its citizens, as well as of our own, with power to use the military and naval forces of the United States as might be necessary for that purpose. The request was granted. He was directed to demand, in the name of the government of the United States, that Spain should at once relinquish its authority in the island of Cuba and withdraw its land and naval forces, and he was directed and empowered to use the army and navy of the United States, and to call into actual service the militia of the several States to the extent that might be necessary to carry out those directions.

War, of course, followed this demand. The naval victory at Manila, the capture of Santiago and its garrison by the American troops, the destruction of the Spanish fleet commanded by Cervera, in its attempt to escape from the habor of Santiago, with other less important though equally decisive victories, convinced the Spanish government of the folly of resistance, and resulted in the surrender by Spain of practically all her insular possessions in both the eastern and western hemispheres.

By the treaty of Paris, through which peace between the United States and the kingdom of Spain was restored, the latter ceded to the United States Porto Rico and the Philippine archipelago, with other islands in the Gulf of Mexico and Pacific ocean, and "relin-

quished all the claim of sovereignty over and title to Cuba." The treaty recognized that the island was to be occupied by the United States, and contained a stipulation for the discharge of the obligations that under international law would result therefrom, so long as such occupation should continue. The treaty imposed no duty on the United States to occupy Cuba for the pacification of the island, or for any purpose, and the sixteenth article provided that "Any obligations assumed under this treaty by the United States with respect to Cuba are limited to the time of its occupancy thereof, but it will, upon the termination of such occupancy, advise any government established in the island to assume the same obligations."

The Spanish commissioners preferred to cede the Spanish sovereignty over the island to the United States, but our commissioners rejected every proposition looking to that end, and it was finally agreed that Spain should, in general terms, "relinquish all claim of sovereignty over and title to Cuba," without indicating to whom or for the benefit of whom the relinquishment was made. Whether the sovereignty passed directly to the people of Cuba, or to the United States in trust, for the ultimate benefit of the people of Cuba, or whether the sovereignty relinquished by Spain remains *in nubibus*, awaiting a resting place, I leave the astute and learned international lawyers who negotiated the treaty to determine.

Pending the negotiations, the Spanish commissioners submitted a proposition to the effect that her majesty, the Catholic Queen, being duly authorized thereto, "relinquishes her sovereignty over the island of Cuba, transferring it to the United States of America, which accept it in order that they may in turn transfer it at the proper time to the Cuban people upon the conditions established in this treaty, the United States promising hereby that as soon as they are ratified they will always be faithfully complied with."

This proposition the American commissioners rejected. Afterwards the Spaniards proposed an article embracing the unqualified

relinquishment of all claim of sovereignty over and title to the island of Cuba, but reciting that the United States "accept said relinquishment, receive the island of Cuba from Spain, and lend its aid and guidance, and hold it under their control and government until, the pacification thereof realized, they leave said control and government to the Cuban people."

The American commissioners also declined to agree to this, and insisted that, as to Cuba, the treaty should follow the language of the protocol, and announced that they would recognize no obligations on our part, except those imposed by the canons of international law and flowing from our occupation of the island. They avowed their readiness to stipulate as to the protection of life and property during the occupation by the United States, and also for the aid and guidance it might be necessary for the United States, in the then distracted condition of the island, to give. The stipulation finally agreed on leaves the continuance of the American occupation discretionary with this country, and while the premature abandonment of the work of pacification might be deemed a disregard of international obligations towards the world at large, Spain could not complain of such abandonment, as a violation of the provisions of the treaty of peace.

This recapitulation of the steps leading to the ultimate adoption of the stipulation that "Spain relinquishes all claim of sovereignty over and title to Cuba," makes it clear that sovereignty over and title to Cuba were expressly refused by the United States, and every precaution taken to negative the conclusion that our contemplated occupation was to involve, even by implication, that we were asserting, even for temporary purposes, the right in the United States to exercise a national suzerainty over Cuba or the people of Cuba. The stipulation finally agreed on was no doubt intended to conform to the declaration of the joint resolution authorizing and directing armed intervention, "That the United States hereby disclaims any disposition or intention to exercise sovereignty or control over said

island, except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people."

It will be observed that this disclaimer is scarcely consistent with the first clause of the resolution to the effect "That the people of the island of Cuba are and of right ought to be free and independent." That language is a paraphrase of our Declaration of Independence, but at the time that Declaration was made we were resisting the British arms through organized government, and with organized armies, while Cuba had no government, other than that of Spain, which the United States were willing to acknowledge, and no armies in the field the regularity of which the United States were willing to recognize.

The joint resolution was amended on the floor of the senate to read "That the people of the island of Cuba are and of right ought to be free and independent, and that the government of the United States hereby recognizes the Republic of Cuba as the true and lawful government of that island."

If that amendment had been accepted by the house, the analogy between the Declaration that the United Colonies were and of right ought to be free and independent states, and the congressional declaration of the 20th of April, 1898, that the people of the island of Cuba were at that time free and independent, would have been fairly perfect. But when the house of representatives disagreed to the amended resolution, and the two houses, on the recommendation of the conference committee, omitted the recognition of the Cuban republic and adhered to the assertion that the people of Cuba were free and independent, they perpetrated an incongruity equalled only by the singular and unprecedented conditions that have followed, and could not fail to follow, the expulsion of Spanish arms from Cuba, and the enforced relinquishment by Spain of her sovereign authority over the island.

In this connection it is proper to say that the action of congress

in regard to the intervention in Cuban affairs did not proceed on party lines. There were differences of opinion as to whether we should recognize the Cuban republic, but none as to the recognition of the freedom and independence of the Cuban people, and none as to the propriety of the disclaimer of our intention to occupy and control the island for any purpose other than its pacification. When the treaty of Paris came on for ratification or rejection, there was throughout the country universal acquiescence in, if not positive approval of, all the provisions relating to Cuba.

Party issues may arise out of, and partisan criticisms may be made as to, the manner in which our self-imposed trust for the pacification of Cuba is being and may be administered, but for the steps leading to the assumption of that trust, and creating the necessity for its administration, and concerning the general character of the work to be performed, the responsibility rests on the whole American people, without regard to party affiliations or alignments. The discredit that will follow failure, if failure there shall be, through the incapacity of the Cuban people to support an independent government, and preserve domestic peace, and protect life, liberty and property in the island, will rest alike on all, and the honor and credit that shall follow success, in the event success shall crown our efforts, will be equally and rightfully shared by all our people, without distinction of party.

We do not hold, and when we had the opportunity we positively declined to acquire, even qualified and temporary sovereign authority in Cuba. We do not, therefore, occupy it under any superior national right, or claim of superior national right.

The United States entered on the occupation of the island and compelled its evacuation by the Spanish forces in virtue of the act of Congress declaring:

1. "That war be, and the same is hereby declared to exist, and that war has existed since the twenty-first of April, 1898, including that day, between the United States and the kingdom of Spain.

2. "That the president be, and he is hereby empowered to use the entire land and naval forces of the United States, and to call into the active service of the United States the militia of the several states to such an extent as may be necessary to carry this act into effect."

This war thus declared was terminated by the treaty of Paris, and when the evacuation of the countries included in the cessions and relinquishment of Spain was completed, the war power could no longer be exercised so far as the kingdom of Spain was concerned.

If we could consistently treat Cuba as a conquered province, won from Spain by the prowess of our army and navy, our right to use our armed forces for its pacification, and for the preparation of its people for local self-government as an organized political community, could not be denied.

When, however, we made peace with Spain, we declined to accept title to Cuba, or to concede that we occupied it as a conquered country. In view of the fact that before a gun had been fired, by way of justifying our proposed intervention, we had declared, in the most solemn manner, that the people of Cuba were then *free*, we could do nothing else than decline the sovereignty tendered by Spain. Our armed intervention was professedly to relieve a *free* people from the dominion of a power whose wrongful assertion of authority they were not strong enough to resist. We expelled the Spaniard, and have taken charge of this *free* people, for the purpose alone of *pacifying* them, and by universal consent at home, are organizing a government to be ultimately turned over to them, in order that they may assume their true position as a free and independent state or nation.

The representatives of the American people, without objection on the part of their constituents and in apparent obedience to their wishes, freed Cuba from the dominion of Spain and undertook to pacify the island, and to supervise and assist in the organization of

a government therein. If the inquiry has been made in any quarter, or by any party, as to the source of our authority to pacify the Cubans, and to organize a government for them, the answer has not attracted attention or provoked discussion. It can not be claimed that in pacifying the Cubans and preparing them for the administration and support of an independent government, we are proceeding under what we sometimes, for the want of a better name, term the war power. We have never been at war with Cuba. We have not subdued the Cuban people. We have all the while acted as their friend, and since April, 1898, have insisted that they were free and of right ought to be free and independent. We do not claim, and have never claimed, that we are occupying and controlling Cuba as a conquered province. We drove out the Spaniards, but we refused to accept from Spain the cession of sovereignty over or title to the liberated country. We are not in Cuba to-day under any legal, constitutional or international claim to ownership, in our own right, or as trustee, or as the holder of title, absolute or qualified, perpetual or temporary.

In these days, questions of constitutional power are much and properly discussed. Constitutional limitations are strenuously and properly insisted on. Applying the most liberal construction to the grants made by the constitution, either in express terms or by reasonable intendment, it is difficult, I may say impossible, to locate the particular provision supporting the authority we are to-day asserting, and actively exercising in the pacification of the Cuban people.

It has been settled by repeated adjudications that we may acquire territory by treaty or by conquest, and may govern such territory when acquired. But our courts are silent, and in view of our past history necessarily silent, as to the authority of the federal government to control, in time of peace, for the purpose of pacification or for any purpose, territory not acquired by conquest or by treaty, or

otherwise, which we do not claim, and title to which we have peremptorily refused to accept.

When, however, exigencies in public affairs require federal action, and the policy proposed meets apparently with universal popular approval, all other sources of federal authority failing, we habitually turn to the general welfare clause of the constitution, and usually with gratifying success. But not so as to the pacification of Cuba. If it be conceded that the constitution grants or recognizes the existence of a distinctive power in congress to provide for the general welfare of the United States, otherwise than by levying taxes, duties, imposts and excises for that purpose, yet no one has claimed that such power includes the general welfare of the island of Cuba any more than the general welfare of any other foreign country.

The disclaimer by congress of any disposition on our part to exercise jurisdiction or control over that country except for its pacification and the assertion of our determination, when that shall be accomplished, to leave the government and control of the island to its own people, necessarily involved the assertion of our right to undertake the pacification of the people, and the government and control of the island, until the work of pacification should be accomplished.

Up to this time congress has studiously refrained from undertaking to direct the execution of that work, or to indicate the time at which it shall be brought to a close, and has studiously left the duty to be performed by the chief executive in his character of commander-in-chief of our army and navy.

The selfish wisdom of this congressional policy can not fail of appreciation. It leaves the members of the two houses to share with the executive the credit that shall attend success, and saves to each senator and representative the unabridged and unembarrassed right to criticise the errors and mistakes that may and must necessarily occur in the progress of the work, and, in the event of its

ultimate failure, the inestimable privilege of repudiating all responsibility for a result that in all human probability would not have come about if his advice had been asked and his views adopted.

As a matter of fact, we are, by general consent, dealing with Cuba as though it was a conquered province. In his work on international law, Halleck states the rule prevailing in the United States in regard to conquered territory thus:

"The president, in the exercise of his constitutional power as commander-in-chief of the army and the military officers under his authority, may, when war has been declared, seize the enemy's possessions, and establish a government and laws for the territory so seized and occupied. Such territory is subject to the sovereignty and dominion of the United States as soon as the enemy is driven out or submits to their arms. But neither the president nor his officers can extend the limits or enlarge the boundaries of the union. This can only be done by congress. As the institutions and laws of the United States do not extend beyond the limits before assigned to them by the legislative power, the inhabitants of a conquered territory, during its military occupation by the United States, can claim none of the rights and privileges established by such laws. And even where these institutions and laws are adopted by the government of military occupation, the rights which they confer upon the inhabitants of the conquered territory do not extend to the states or territories of the United States. The conquered territory is under the sovereignty and authority of the union; but it is not a part of the United States; nor does it cease to be a foreign country, or its inhabitants cease to be aliens, in the sense in which these words are used in the laws of the United States. They are to be governed by martial law, as regulated and limited by public law. But such territory forms no part of the union, and its inhabitants have none of the rights, immunities and privileges of citizens of the United States, under the federal constitution and laws; nevertheless, other nations are bound to regard

the conquered territory while in the possession of the United States as its territory, and to respect it as such, and to regard its inhabitants as under its protection and government; 'for, by the laws and usages of nations,' says Chief Justice Taney, 'conquest is a valid title, while the victor maintains the exclusive possession of the conquered territory. The citizens of no other nation, therefore, have a right to enter it without the permission of the American authority, nor to hold intercourse with its inhabitants, nor to trade with them. As regards all other nations, it is a part of the United States, and belongs to them as exclusively as the territory included in our established boundaries.'"

In regard to our temporary and provisional relations with Cuba, there is a general consensus of opinion that the principles enunciated in this extract are applicable to the conditions of that island, and may be justly and properly enforced, so long as we find it necessary to enforce them, in the work of pacification. In disregard of our rhetorical declaration, made when we commenced the war with Spain, that the people of Cuba were then free and independent, the United States are, and since the ratification of the treaty of peace with Spain have been, governing and controlling that people without reference to their consent, and in obedience to American convictions as to that which will result to our own and to their ultimate good.

By his last annual message the president said to congress that, whatever might be the outcome of our intervention in Cuban affairs, "we must see to it that free Cuba be a reality, not a name; a perfect entity, not a hasty experiment bearing within itself the elements of failure. Our mission, to accomplish which we took up the wage of battle, is not to be fulfilled by turning adrift any loosely framed constitution to face the vicissitudes which too often attend weaker states, whose natural wealth and abundant resources are offset by the incongruities of their political organization and

the recurring occasion for internal rivalries to sap their strength and dissipate their energies."

To this announcement no political organization has entered its dissent. The methods of the president in carrying out our policy in Cuba, and the mishaps and misconduct of those engaged in making "Cuba a reality, not a name," have been and are being freely criticised, and are legitimately open to fair and honest criticism, but the purposes and ends of our occupation and control, and the general plan of the work of pacification, command general endorsement and approval.

The civil and criminal codes which prevailed in Cuba prior to the relinquishment of Spanish authority are now, with certain modifications, in force, but not because the free people of Cuba have so decreed. They are in force in virtue alone of the orders of the military governor, an officer of our army, deriving his authority from the United States, and not from the people of Cuba. The officials charged with the enforcement of those codes, from the chief justice of the supreme court to the humblest ministerial officer, have heretofore taken titles to their places, directly or indirectly, from the American military governor, and have held them at his will.

The authority the United States assumes to exert in Cuba and over the Cuban people is essentially imperial. The exertion of such authority seems to be demanded by the conditions of the island, and our people, without regard to party, have thus far been reconciled to and have approved its exercise. Congress was in session more than six months, with full knowedge of the facts, and passed no resolution or statute on the subject, and no proposition was seriously made in either house requiring or advising the commander-in-chief of the army and navy to modify or change his policy of pacification. In fact, congress were so well satisfied with that policy that during the last days of the recent session a statute was enacted rendering citizens of the United States, who may have

had or in the future may have occasion to visit Cuba, criminally answerable according to the rules and regulations of the government now being administered in that island.

By an act approved June 6, 1900, it is provided that whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who shall violate, or has violated, the criminal laws in force therein, by the commission of a non-political offense, from murder down to the malicious destruction of a bridge, and who shall depart or flee, or who has departed or fled, from justice therein to any portion of the United States, shall be liable to arrest and detention, and on the written request or requisition of the military governor or other chief officer in control of such foreign country or territory, shall be returned or surrendered to such authorities for trial under the laws in force in the place in which such offense was committed. The proceeding for the return of the person whose surrender may be requested or demanded is to be had before a judge of one of the courts of the United States, who is to act on evidence of probable guilt, and the return is to be made on the order of the secretary of state.

There being only one foreign country or territory occupied by or under the control of the United States, this extradition is intended, for reasons we all understand, to apply to Cuba, and to Cuba alone.

Our extradition treaties generally contain clauses excusing us from surrendering our own citizens to be tried by foreign tribunals, and only two or three days before the passage of the act in question we ratified a treaty with the republic of Switzerland containing a clause of that kind.

Tried at home on a criminal charge, a citizen of the United States can not be held to answer for a capital or otherwise infamous crime, unless on the presentment or indictment of a grand jury, nor be compelled to be a witness against himself, nor deprived of the right of trial by an impartial jury. Under the provisions of

this Cuban extradition act, on evidence of probable guilt, citizens of the United States may be sent to Cuba, where these constitutional safeguards, if they exist at all, exist only to an imperfect degree, and at the will of the military governor, to be tried for the gravest offenses, and upon such trials deprived of life or liberty without the intervention of a fair and impartial jury, or of any jury at all. To the objection that we were subjecting all American citizens who may go to and return from Cuba to the possibility of extradition, on mere probable cause, it was answered that our occupation of Cuba is necessarily limited in point of time, that we control absolutely in that country, and that no harm can come to the innocent in trials by the Cuban courts.

It was also said that if a trial in Cuba should be going on contrary to correct and just principles, the military governor can interfere, and that the president, by one telegram, can absolutely control the judicial proceeding and provide against any one being wronged, and that if the existing guarantees are not sufficient, the military governor can make them so, and that we could not permit a dishonest man to go to Cuba, commit a crime, and come back to this country for safety.

Through the military governor of Cuba we do exercise absolute control in that country, and it is true that his power to remedy injustice and to protect against unauthorized punishment is plenary and complete. But by this Cuban extradition act we provide for the transportation of American citizens to a foreign country to be tried in courts established by a military governor, the judges of which he appoints, and whose salaries and tenure of office he prescribes, and who administer laws, having no higher sanction than his official orders or edicts.

Among the complaints set out in the Declaration of Independence against George the Third are the following:

For having "made judges dependent on his will alone for the

tenure of their offices and the amount and payment of their salaries."

"For depriving us, in many cases, of the benefits of trial by jury."

"For transporting us beyond the seas to be tried for pretended offenses."

Our constitutional securities against arbitrary arrest and punishment are not intended to protect and do not protect the guilty. They rest on the reasonable presumption of innocence, and guard against guilt being imputed to any man, however humble, until established by legal testimony, in a tribunal which recognizes the elementary principles of human rights. The constitution may not prohibit American citizens from being extradited to answer for crimes alleged to have been committed in foreign countries, even though the laws of such countries do not secure trials by jury; but inasmuch as the constitution prohibits the trial at home of citizens of the United States by military tribunals, "except in cases arising under the land and naval forces, or in the militia when in actual service in time of war or public danger," we might well have hesitated to enact a statute peremptorily directing that on evidence of probable guilt our citizens, without exception, shall be sent out of the United States to be tried in courts owing their existence to military orders and holding their sittings in a country to which, although under our absolute control, the constitution, as all admit, has not followed the flag.

In my opinion it would have been reasonable to confine the operations of this extradition statute, so far as it includes citizens of the United States, to those who, having gone to Cuba as agents or employes of our government to assist in the administration of our temporary and provisional authority in that island, had criminally violated, or might hereafter criminally violate, the trusts reposed in them, and depart for or flee to the United States for safety.

It would have been better, during the brief period we are to occupy Cuba, to let some offenders escape just punishment than to

go beyond the necessities of the occasion in the transportation of American citizens beyond the seas to be tried for alleged offenses in courts and under *quasi* military laws, for the existence of which the necessities growing out of our peculiar relations to Cuba afford the only justification or excuse.

Of course, we may trust our own authority, but, as said by a distinguished senator: "The question is, whether the authority of ours that is to be trusted is not the authority of our law-making power; whether it is not we the senate, we the house of representatives, and we the president, whose discretion and sound judgment should settle this thing."

There is no reason to believe that the military governors of Cuba have abused or in the future will abuse the great powers with which it has been necessary to invest them. But the occasion must be extraordinary and the necessity imperative to warrant our government in lending its aid for the deprivation of a citizen of the United States of the safeguards to life and liberty inherited from our English ancestors and crystallized in our constitutional bill of rights. Constitutional authority in congress to make the enactment may exist. It was intended to accomplish a desirable end, and was regarded as essential to the vindication of our good faith and national honor. It met the approval and had the support of the leaders of the great political parties of the country. To the extent it may result in good, all will share the credit, and if evil shall follow it, the responsibility will rest on all alike.

The discussion of the controlling features of this unprecedented enactment, and the consideration of the arbitrary characteristics of the government we have been compelled to set up and administer in Cuba for the pacification of its people, have been pursued in no spirit of fault-finding or criticism, but to illustrate, as they do most strikingly illustrate, that in promoting ends that meet our unqualified approval, or in accomplishing purposes we regard as of first importance, we deal more liberally with delegated powers, and

find much less difficulty in disposing of constitutional limitations than when we doubt the advantages, or find that the end in view does not accord with our interest or harmonize with the policies of the party organization with which we affiliate.

Jefferson overcame his constitutional scruples when it became necessary to purchase Louisiana, and we, the strict constructionists of to-day, did not shrink from the exercise of imperial power when, in obedience to the overwhelming and aggressive sentiment of the people, we determined that after expelling the Spaniard from Cuba we would pacify its people, and as a means thereto would in our own way organize for them a stable government, the powers of which are ultimately to receive their consent and to reflect their will.

In a discussion between Webster and Calhoun over the nature and extent of federal authority in the territories, Mr. Calhoun remarked: "Again, the honorable gentleman from Massachusetts says that the territories are not a part of the United States; I had supposed that all the territories were part of the United States. They are so called." Mr. Webster responded, "Never." "At all events they belong to the United States," said Calhoun. Mr. Webster from his seat responded: "That is another thing. The colonies of England belong to England, but they are not a part of England." "But," replied Mr. Calhoun, "whatever belongs to the United States, they have authority over, and England has authority over whatever belongs to her. We can have no authority over anything that does not belong to the United States, I care not in what light it may be placed."

Concerning the proposition that we can have no authority over anything that does not belong to us, there seemed to be no disagreement between these two distinguished statesmen.

But we now have a case in which we assume to exercise supreme authority over a country that does not belong to us, and whose people owe no allegiance to our government. We do not own Cuba,

and we refused to accept title to it when Spain offered to cede to us her recognized sovereignty in that island.

There are those who deny our right to govern the people of Porto Rico without their consent. There are those who deny our authority to pacify the Philippines, or to inaugurate for them a government that is not substantially in accord with the terms, conditions and limitations of the federal constitution. But no one, or rather no organization, social, religious or political, denies our lawful authority, for the time being, to govern the Cubans without their consent, and to occupy and control their country until, in a spirit of good faith that meets our approbation, they shall accept the plan of government we see proper to dictate, and undertake to administer it in harmony with our conceptions of efficiency and stability.

I do not claim that we are violating the federal constitution or exercising ungranted powers in dealing with the questions of Cuban independence, or with the pacification of the Cuban people.

So far as the Spaniards and Cubans are concerned, ours is not a government of delegated powers, and our constitutional limitations on federal authority were not intended for their benefit.

The success attending our revolutionary struggle made good the declaration that the United Colonies as free and independent states have full power to declare war, conclude peace, contract alliances, establish commerce, and do all others acts and things which independent states may of right do. The more perfect union, for the consummation of which we established and ordained the constitution, was intended, among other things, to provide for the common defense, promote the general welfare, and secure the blessings of liberty to the people of the United States and their posterity.

In the distribution of the powers of government, those delegated to the general government affecting domestic affairs are specified and enumerated, and to those powers the rule of strict construction may be applied, but this rule has no application to the powers of

government affecting and controlling our relations with foreign countries. As to the American states and their people, the federal constitution sets out the grants, marks the boundaries, and prescribes the limitations of federal authority, but in our intercourse with the outside world our national government may, consistently with the constitution, do and perform all the acts and things which other independent states may of right do. At home, and with our own people, the union is a constitutional federal republic. With the world at large, it is sovereign. It recognizes no superior, and is restrained alone by the canons of international law, and the rules of natural justice and common reason.

Our proximity to Cuba, and its commanding situation in the Gulf of Mexico, give the United States exceptional interest in the affairs of that country. For more than seventy-five years we have kept the world on notice that we would not consent to its transfer by Spain to any other nation. Mr. Jefferson said in 1823 that it was better we should then "lie still in readiness to receive that interesting incorporation when solicited by (Cuba) herself, for certainly her addition to our confederacy is exactly what is wanted to round out our power as a nation to the point of its ultimate interest." Next to the acquisition of the island, our interest, our sympathy and our sentiment have favored its independence. We have always regarded the desire for independence on the part of its people as a natural and legitimate aspiration, and have not doubted that the prediction made in 1873 by Mr. Fish, then secretary of state, that the ultimate issue of events in Cuba would be its independence, whether by negotiation, or military operations, or "one of those unexpected incidents which so frequently determine the fate of nations," would some day be verified.

Weyler's treatment of the reconcentrados prepared our people for the unexpected incident. It came in the destruction in the harbor of Havana of the American battleship Maine. Outraged beyond endurance by the accounts of Spanish cruelty, by the fail-

ure of Spain to perform her treaty obligations with and international duties toward our government, and by the unexplained destruction of the American battleship with two hundred and sixty-six of its officers and crew, our government intervened and by the strong hand terminated in that island the dominion of the Spanish crown.

As the dominant power of the western world, the government of the United States, in its sovereign capacity, had the inherent right to intervene between Spain and her revolting subjects. In such contests a nation may interfere whenever its own integrity, tranquillity or welfare so demands.

The Monroe doctrine is consistent with the principles of international law in their application to American affairs. It is indifferent that those principles have not been formally recognized by European nations or in terms accepted by European writers. That doctrine is not confined to the contention that America was not to be regarded as a field for European colonization, or to the declaration that European governments were not to attempt to extend their political systems to American countries. That contention and that declaration were made at a time when the policy of the holy alliance threatened the integrity of South American independence and the maintenance of the free institutions the South American countries were attempting to establish, but the principles admit of a far more comprehensive application. It was said by President Monroe that:

"In the wars of the European powers in matters relating to themselves, we have never taken any part, nor does it comport with our policy to do so. It is only when our own rights are invaded or seriously menaced that we resent injuries or make preparations for our defense. With the movements in this hemisphere we are necessarily more immediately connected, and by causes which must be obvious to all enlightened and impartial observers. The political system of the allied powers is essentially different in this respect

from that of America. This difference proceeds from that which exists in their respective governments. And to the defense of our own, which has been achieved at a loss of much blood and treasure, and matured by the wisdom of their most enlightened citizens, and under which we have enjoyed unexampled felicity, this whole nation is devoted."

Disclaiming any desire to disturb existing conditions in America, as well as acknowledging readiness to acquiesce in the settlement of European questions in accordance with European opinion, President Monroe continued:

"But in regard to these continents, circumstances are eminently and conspicuously different. It is impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness, nor can anyone believe that our southern brethren, if left to themselves, would adopt it of their own accord. It is equally impossible, therefore, that we should behold such interposition in any form with indifference."

This doctrine contemplates absolute non-interference on our part in the affairs of Europe. It imperatively requires non-interference by European countries in the concerns of the Americas. It has no application to other portions of the world, and leaves Europeans and American countries to compete for advantages in the trade and commerce of the Asiatic nations on terms of equality, unrestrained and unembarrassed by the rule of conduct thus prescribed by Monroe, and religiously upheld and supported by all the great men who have succeeded him in the presidential office.

With the movements of public affairs in this hemisphere our connections are immediate and our interests predominant. We have the right to make, and it is our duty to make, provision against whatever may endanger our peace and happiness, or threaten the perpetuity of our institutions. In the concrete this is the Monroe doctrine. It rests on the right of self-defense, and our

perfect self-defense comprehends the protection and preservation of the material, social and institutional rights of the American people, and involves the continued exclusion from this continent of new political influences incompatible with the American theory of government, or hostile to the natural development of American resources or to the encouragement of American progress.

When, in a country situated like Cuba, in the pathway of American commerce, in whose prosperity we have vital, peculiar and exceptional interests, anarchy takes the place of organized government, and violence and lawlessness become chronic and irrepressible, we have the right, and it is our duty, to interfere for the restoration of peace and order, and we must of necessity judge as to the steps necessary for the restoration of peace and the preservation of order.

Before we consented to give up our established policy of neutrality, the inability of Spain to suppress lawlessness and restore order in Cuba had become manifest. Her sovereignty was extinguished for all the rightful purposes of its existence. We were compelled to meet obligations which circumstances rendered higher than the obligations of neutrality, and doing so, we violated no canon of international law and acted strictly within the powers inhering in our national government, as the representative of the free and independent American states composing the federal union.

We are also acting within the scope of those inherent powers in seeing to it that free Cuba shall prove a reality, and that the independent government we propose to secure to the Cuban people shall not turn out to be "a hasty experiment bearing within itself the elements of failure." Free Cuba is a sentiment with the American people. They look forward expectantly to the day when, standing alone as an American state, the Cuban people whom we have assisted to their freedom shall justify the hope that they have the capacity, the patriotism, the patience and the fortitude to endure the trials and to overcome the difficulties, necessarily incident to

the experiment of free government, to enforce obedience to law, to preserve order, to protect life, liberty and property, and to respect and perform the obligations they must assume as a free and independent American state.

We do not agree concerning our true policy as to the island and people of Porto Rico. We differ widely as to the duties and obligations we have incurred in regard to the Philippine archipelago, as well as to the nature and extent of the rightful powers we may exert in settling the relations the people of those countries are to bear to our government at home.

It is a gratifying fact that we have no difference of opinion as to the destiny of Cuba. We have made good our declaration "That the people of Cuba are and of right ought to be free and independent." We shall faithfully keep the assurance we voluntarily gave the world that we have "no disposition or intention to exercise sovereignty or control over said island except for the pacification thereof." We are reasserting each day our determination, when pacification shall have been accomplished, "to leave the government and control of the island to its people."

To-day there is no apparent reason why, before your next annual meeting, the authority of the United States may not be withdrawn, and the problem of Cuban independence left in the hands of the free people of Cuba, to be worked out, as we all fervently hope, with complete success, through the statesmanship, the patriotism and the self-sacrifice necessary to the creation of a new member of the commonwealth of nations.

It is not to be concealed that our hopes for the success of Cuban independence are coupled with apprehension. The difficulties to be met and overcome will not manifest themselves in their true proportion until after our helping hand shall have been withdrawn. The elements of faction and disorder may then presume to measure their strength with that of the newly organized government, and possibly it may turn out that domestic tranquillity and the bless-

ings of liberty can not be preserved by the unaided strength of the law-abiding and liberty-loving people of that favored island.

But whether Cuba be or not capable of maintaining her separate independence, her people are guaranteed their freedom, and they may confidently expect the perpetual enjoyment of free institutions, and all the attendant blessings of civil liberty. It is as true to-day as it was three-quarters of a century ago, that "Cuba, forcibly disjointed from its own unnatural connection with Spain, and incapable of self-support, can gravitate only towards the North American union, which, by the same law of nature, can not cast her from its bosom."

MR. WILLIAM P. BREEN: I move that the thanks of the association be extended to Senator Lindsay for his able, interesting and instructive address.

THE PRESIDENT: Gentlemen, we will take a rising vote upon the motion. Those in favor will please rise.

The motion was unanimously carried by a rising vote.

THE SECRETARY: Mr. Ketcham wanted it to be announced that he wished to entertain the members of the bar association at his house this evening. If you will take a street car at the Bates House, a Fairview Park car, between half past six and half past seven, the car will get you out there in plenty of time.

MR. W. A. KETCHAM: I will not be here this afternoon. On behalf of the executive committee I want to make a motion. It is known, perhaps, to all the members of the association that the American Bar Association and most of the state bar associations have made provisions for the celebration of the centennial anniversary of Chief Justice Marshall's ascendancy to the occupancy of the office of chief justice of the supreme court of the United States, on the fourth of February next, and the executive committee have instructed me to report the matter, with the recommendation that the incoming executive committee take steps for the proper cele-

bration of that day, or that occasion, namely, the fourth of February next; and I will ask to have that matter stand over until after the reading of the papers on to-morrow morning, so that the members of the association may consider it and make up their minds as to what they desire to do in relation to it.

Passing to another subject, Mr. Chairman, my cousin's voice was a little feeble when he began to make the announcement, and I think the members of the association did not understand that they were invited to be at Mr. Ketcham's residence; at least some of them in my neighborhood did not so understand it, and I beg to announce that the members of the association are cordially invited to my residence this evening.

THE PRESIDENT: I think I voice the feelings of the members of the association when I say that they will regard an invitation to a reception at the country home of Mr. Ketcham as the promise of a delightful time, and I hope that the members of the association, so far as possible, will attend.

On motion, the meeting adjourned until 2 o'clock p. m.

AFTERNOON SESSION.

TUESDAY, July 10, 1900.

THE PRESIDENT: Gentlemen, we will now take up the business of the afternoon session, which is routine in character. We passed this morning upon the minutes of 1899. The next thing in order is the report of the executive committee, which will be presented by the secretary.

THE SECRETARY: The executive committee wish to report an amendment to Article X of the by-laws, in relation to the committee on grievances. The committee on grievances, under our by-laws as they now exist, has no authority whatever over anything outside of the association, but simply grievances against members of the association; it can not reach beyond members of the association. Mr. Rowland Evans, who is a member of the association,

took the by-laws of the bar associations of New York and Virginia and of several of the other more progressive states as a type to be followed, and has added to what is now in the by-laws certain clauses and submitted a new draft of Article X to the executive committee for its recommendation in the form of an amendment to the by-laws. The committee, after studying the matter submitted by Mr. Evans, and making some trifling amendments, unanimously voted last night to recommend that these amendments to the by-laws be adopted.

As I understand it, Mr. Evans, the first half of this amendment, relating to the control of the committee over members of the association, is substantially the same as the by-law is at present?

MR. ROWLAND EVANS: That is correct, with some verbal changes in the text which do not substantially enlarge the powers of the committee.

THE SECRETARY: The amendment, which I will read, is as follows:

"X. Whenever any complaint shall be preferred against a member of the association for misconduct in his relations to the association, or in his profession, the person or persons preferring such complaint shall present the same to the committee on grievances, in writing, subscribed by the complaining party, plainly stating the matter complained of.

"If the committee is of opinion that the matters therein alleged are of sufficient importance, it shall cause a copy of the complaint, together with a notice of not less than thirty days of the time and place when the committee shall meet for the consideration thereof, to be served upon the member complained of, either personally or by leaving the same at his place of business during office hours, properly addressed to him; and it shall cause a similar notice to be served on the party presenting the complaint. At the time and place appointed, or at such other time as may be named by the committee, the member complained of may file a written answer or de-

fense, and the committee shall proceed to the consideration of the case upon such complaint and answer, or upon the complaint alone, if no answer is interposed.

"The complainant and the member complained of shall each be allowed to appear personally and by counsel, who must be members of the association, and shall produce their witnesses. The witnesses shall vouch for the truth of their statements on their word of honor. The committee may summon witnesses, and, if such witnesses are members of the association, a neglect or refusal to appear may be reported to the association for its action.

"Before the trial shall commence, the member complained of may object peremptorily to any one or more of the committee, not exceeding three; and the places of those objected to shall be supplied, for the purposes of trial, by appointment by a majority of the remaining members of the committee who are in attendance.

"The committee, of whom at least seven must be present at the trial, except that a less number may adjourn from time to time, shall hear and decide the case thus submitted to them, and shall determine all questions of evidence.

"If it finds the complaint, or any material part of it, to be true, it shall so report to the next annual meeting of the association, with its recommendation as to the action to be taken thereon, and, if requested by either party, may, in its discretion, also report the evidence taken or any designated part thereof.

"The association shall thereupon proceed to take such action on said report as it may see fit: *Provided, however,* That no member shall be expelled unless by the vote of two-thirds of the members present and voting.

"Whenever specific charges of fraud, or gross unprofessional conduct, shall be made in writing to the association by a reputable person against a member of the bar not a member of the association, or against a person pretending to be an attorney, practicing in this state, said charges may be investigated by the committee on griev-

ances; and if, in any such case, said committee shall report in writing to the executive committee that, in its opinion, the case is such as requires further investigation or prosecution in the courts, the executive committee may appoint one or more members of the association to act as prosecutor, whose duty it shall be to conduct the further investigation or the prosecution of such offender, under the instructions and control of the committee on grievances.

"Whenever any complaint shall be made in writing to the association concerning any other grievance touching the practice of law or the administration of justice, the committee on grievances shall make such preliminary investigation into the same as it may deem necessary in order to determine whether it is expedient that any further action shall be taken thereon. Should such further action be, in its opinion, expedient, the committee shall report in writing to the executive committee that, in its opinion, the charge or charges are of such a character as to require further investigation. Thereupon the executive committee may direct such further investigation by the committee on grievances, or otherwise, as it may deem most suitable to the case. Upon the termination of such investigation, a report thereon shall be made to the executive committee, and if the said committee shall find the complaint or any material part of it to be of such a nature as to require action by the association, it shall so report to the association, with its recommendation as to the action to be taken thereon, and it may also report the evidence taken, or any part thereof.

"The reasonable disbursements of the committee on grievances for expenses incurred in any trial, prosecution or investigation may be paid out of the funds of the association, under the direction of the executive committee.

"All the foregoing proceedings shall be secret, except as their publication is hereinbefore provided for, unless otherwise ordered by the association by a two-thirds vote."

THE SECRETARY: As I understand it, there was no immediate

necessity for the enlargement of the powers of the grievance committee. The desire was simply to be in line with the more progressive states, and to have authority, if the occasion should arise, for the committee on grievances to act. The trouble that courts and bar associations have is not usually with lawyers who are members of bar associations; lawyers who make trouble are generally outsiders. For the executive committee, I move that the amendment be adopted.

MR. L. J. HACKNEY: Mr. President, I have not a very clear remembrance of the articles of association. My impression is that they were a little vague as to the objects of the association, and for the sake of information I would suggest the inquiry as to whether this by-law is not more comprehensive than the objects of the association would permit.

MR. W. A. KETCHAM: Mr. President, the articles of association provide that one of the objects of this association shall be "to uphold the honor of the profession of the law." I think that the proposed amendment is within the scope of the objects of this association. That provision is pretty broad.

THE PRESIDENT: The first half of the proposed amendment is substantially as the by-law now stands, with some slight verbal amendments, amendments of comparatively small consequence, and the latter half constitutes an addition to the powers of the grievance committee over persons who are not members of the association. This amendment was carefully considered at a meeting of the executive committee last night, and its adoption recommended by that committee. Are you prepared now to vote? Those in favor of the proposed amendment will say "aye;" contrary "no."

The amendment was unanimously adopted.

THE PRESIDENT: The next in order, gentlemen, is the report of the treasurer.

THE SECRETARY: Judge Davis has handed his report to me to be read:

TREASURER'S REPORT

INDIANAPOLIS, IND., July 10, 1900.

To the State Bar Association of Indiana:

As treasurer of the State Bar Association of Indiana, I beg to submit the following report:

1899.	Amount on hand at last report	$1,304	55
	Dues from		
July 7.	D. P. Williams	5	00
	T. H. Simmons	10	00
	Chas. A. Weathers	5	00
	F. M. Jackson	5	00
	W. E. Clapham	5	00
	Alexander Hess	5	00
	Wm. P. Herod	5	00
	Augustin Boice	5	00
	H. C. Morrison	5	00
	Isaac Carter	5	00
	George H. Gifford	5	00
	James Sansberry	5	00
	W. D. Robinson	5	00
	P. O. Colliver	5	00
	James E. Piety	5	00
	Ed Daniels	5	00
	Samuel Parker	5	00
	Emerson McGriff	5	00
	W. W. Cook	5	00
	William H. Dye	5	00
	Thomas J. Cofer	5	00
	William J. Vesey	5	00
10.	E. P. Hammond, Jr	10	00
	John H. Gould	5	00
11.	Newton W. Gilbert	10	00
Aug. 10.	Smiley N. Chambers	5	00
	Samuel O. Pickens	5	00
	John T. Dye	5	00
	James Bingham	5	00
	John C. Nelson	5	00

Aug. 10.	Frederick H. Wiley	$5 00
11.	George A. Cunningham	5 00
	G. V. Menzies	5 00
	W. W. Woollen	5 00
	Frederick A. Joss	5 00
	John R. Brill	5 00
12.	D. W. Henry	5 00
	Henry H. Mathias	5 00
	Jesse R. Long	5 00
	William L. Taylor	5 00
	Thomas L. Stitt	5 00
	Horace E. Smith	5 00
14.	Arthur W. Brady	5 00
15.	George W. Funk	5 00
	Simeon Stansifer	5 00
16.	Harold Taylor	5 00
	J. D. Welman	5 00
17.	James A. Rohbach	5 00
25.	J. B. Collins	5 00
28.	Linton A. Cox	5 00
29.	John W. Spencer	5 00
Sept. 2.	John W. Donaker	5 00
	Robert B. Hanna	5 00
4.	Robert C. Bell	5 00
	Lafayette Perkins	5 00
12.	R. O. Hawkins	5 00
25.	Albert J. Beveridge	5 00
26.	Alexander Gilchrist	5 00
Oct. 2.	John L. McMaster	5 00
5.	Henry Clay Allen	5 00
9.	Edwin C. Vaughn	5 00
16.	Charles L. Holstein	5 00
20.	George F. Palmer	5 00
Nov. 3.	Milton Kraus	5 00
22.	T. E. Ellison	5 00
1900.		
Mar. 7.	Harry B. Tuthill	5 00
Apr. 24.	M. L. Spencer	5 00
26.	Noble C. Butler	5 00
	Harold Taylor	5 00
	Morris M. Townley	10 00
	William V. Stuart	5 00
	John L. Rupe	5 00
27.	Frank Foltz	5 00
	Thomas R. Paxton	5 00
	George Ford	5 00

April 27.	Ralph Applewhite	$5 00
	Abe Simmons	5 00
	Joseph S. Dailey	5 00
	Jesse R. Long	5 00
	James Bingham	5 00
	William Ward Cook	5 00
	A. A. Chapin	5 00
	S. P. Baird	5 00
	G. L. Reinhard	5 00
	Andrew Anderson	5 00
	Mark Storen	5 00
	Allen Zollars	5 00
	Joseph H. Shea	5 00
	Nathan Morris	5 00
	James M. Barrett	5 00
28.	E. K. Strong	10 00
	Charles A. Weathers	5 00
	John L. Bretz	5 00
	Elbert M. Swan	5 00
	Samuel M. Hench	5 00
	John T. Beasley	5 00
	Alexander Gilchrist	5 00
	William B. Austin	5 00
	O. B. Jameson	5 00
	W. A. Traylor	5 00
	Charles W. Smith	5 00
30.	H. B. Shively	5 00
	Oliver H. Bogue	5 00
	G. V. Menzies	5 00
	Charles F. Remy	5 00
	R. S. Taylor	5 00
	John Morris, Jr	5 00
	B. V. Marshall	5 00
	George A. Cunningham	5 00
	Silas A. Hays	5 00
	Thomas L. Stitt	5 00
	Robert Lowry	5 00
May 1.	Wm. H. Martin	5 00
	C. V. McAdams	5 00
	Alexander Dowling	10 00
	F. P. Foster	5 00
	William P. Breen	5 00
	Simeon Stansifer	5 00
	John W. Donaker	5 00
2.	James S. Drake	5 00
	John S. Bays	5 00

May 2.	W. S. Shirley	$5 00
	Guilford A. Deitch	5 00
	James L. Mitchell	5 00
	C. M. McCabe	5 00
	N. O. Ross	5 00
	John B. Cockrum	5 00
	W. G. Colerick	5 00
3.	Chas. W. Miller	5 00
	C. C. Shirley	5 00
	H. M. Logsdon	5 00
	E. P. Hammond	5 00
	W. A. Woods	5 00
	S. D. Coffey	5 00
4.	W. H. H. Miller	5 00
	George E. Clarke	5 00
	Benjamin Crane	5 00
5.	S. M. Ralston	5 00
	John W. Kern	5 00
	S. B. Davis	5 00
	Benjamin Harrison	5 00
7.	Chas. E. Barrett	5 00
	Ephraim Marsh	5 00
8.	Francis E. Baker	5 00
	Chester Bradford	5 00
	John S. Duncan	5 00
9.	Smiley N. Chambers	5 00
	William W. Moffett	10 00
	Owen N. Heaton	5 00
	William P. Kappes	10 00
	J. D. Conner, Jr	10 00
10.	Frank W. Morrison	10 00
	J. W. Headington	5 00
	Milton Kraus	5 00
	Milton Bell	5 00
	W. C. Purdum	5 00
11.	W. H. DeWolf	5 00
	Lincoln Dixon	5 00
	John G. Williams	5 00
	George W. Funk	5 00
12.	Charles L. Jewett	10 00
15.	L. J. Kirkpatrick	10 00
	Frederick H. Wiley	5 00
	M. Z. Stannard	5 00
17.	William J. Vesey	5 00
	David A. Myers	5 00
18.	William C. Smith	5 00

May 21.	J. W. Fesler	$5 00
	O. H. Montgomery	5 00
	Robert B. Dreibelbiss	5 00
	Horace E. Smith	5 00
22.	John L. McMaster	5 00
23.	George E. Downey	5 00
	J. W. Youche	5 00
28.	Sol A. Wood	5 00
30.	John W. O'Hara	5 00
June 4.	John V. Hadley	10 00
5.	C. G. Renner	5 00
6.	Peter Maier	5 00
12.	Alonzo G. Smith	5 00
14.	James E. Rose	10 00
	James H. Rose	10 00
15.	Dan W. Simms	5 00
16.	Charles A. Dryer	10 00
	Thomas J. Brooks	5 00
	Frank M. Powers	5 00
18.	Lewis C. Walker	5 00
	Charles Martindale	5 00
19.	E. A. Bratton	5 00
	O. M. Welborn	5 00
	Edwin Taylor	5 00
	James H. Jordan	5 00
	L. J. Hackney	5 00
	Charles C. Binkley	5 00
	Charles L. Holstein	5 00
	William F. Elliott	5 00
	James A. Rohbach	5 00
	J. E. McCullough	5 00
	James B. Black	5 00
20.	John C. McNutt	5 00
	William S. Diven	5 00
	Samuel R. Hamill	10 00
	Hamilton A. Mattison	10 00
	W. C. Overton	5 00
	John E. Lamb	5 00
	George E. Ross	5 00
	Alexander C. Ayres	10 00
	Charles C. Spencer	5 00
	Curran A. DeBruler	5 00
	Ferdinand Winter	5 00
	Rowland Evans	5 00
	John H. Baker	5 00
	James B. Harper	5 00

June 20.	J. A. Hindman	$10 00
	S. O. Pickens	5 00
	Edward Daniels	5 00
21.	William Cummings	5 00
	John H. Gould	5 00
	George W. Brill	10 00
	George C. Harvey	10 00
	Dan Waugh	5 00
	Quincy A. Myers	5 00
	Robert B. Hanna	5 00
	Thomas J. Cofer	5 00
	Charles E. Shively	5 00
	Braden Clark	5 00
	Leander J. Monks	5 00
22.	I. H. Fowler	5 00
	Enoch G. Hogate	5 00
	John F. Carson	10 00
23.	Charles W. Moores	5 00
	Robert H. Colt	10 00
25.	Truman F. Palmer	5 00
	Charles P. Drummond	5 00
	Andrew A. Adams	5 00
	M. A. Chipman	10 00
	Robert C. Bell	5 00
	L. B. Nash	5 00
26.	Frank H. Dunnahoo	10 00
	J. P. Elliott	5 00
	D. E. Kelly	10 00
	N. L. Agnew	5 00
27.	Frank S. Roby	5 00
	V. H. Lockwood	5 00
	J. H. Louden	5 00
	Caleb S. Denny	5 00
	W. L. Penfield	5 00
28.	T. E. Howard	5 00
	Arthur W. Brady	5 00
	R. B. Beauchamp	5 00
29.	Vinson Carter	5 00
30.	Daniel W. Comstock	10 00
July 2.	O. J. Lotz	5 00
	L. B. Ewbank	5 00
3.	George H. Voight	5 00
	John T. Dye	5 00
	A. W. Hatch	5 00
5.	Cyrus Cline	10 00
	Walter A. Funk	10 00

July 5.	W. W. Woollen	$5 00
	Albert Rabb	5 00
6.	Theo. P. Davis	5 00
	Frank E. Gavin	5 00
	H. C. Sheridan	5 00
	Frank A. Comparet	5 00
	D. P. Williams	5 00
	John H. Foster	10 00
7.	Frederick A. Joss	5 00
	Perry L. Turner	10 00
	Pliny W. Bartholomew	5 00
9.	T. J. Louden	5 00
	J. W. Morrison	5 00
	George H. Gifford	5 00
	Conrad Wolf	5 00
	Anthony Deahl	10 00
	John R. Wilson	5 00
	Samuel Ashby	5 00
	James L. Clark	5 00
	W. H. Eichhorn	10 00
	James E. Piety	5 00
	H. C. Allen	5 00
	L. M. Harvey	5 00
	B. F. Corwin	5 00
	Total	$2,889 57

As such treasurer I have expended the following amounts:

1899.		
July 7.	William Wirt Howe	$75 00
	Postage	5 00
Aug. 15.	Reporter Publishing Company—	
	1,000 circular letters	9 00
	Rowland Evans—	
	Services in reporting minutes of annual meeting	82 45
	Elva I. Holdson—	
	Services as stenographer	5 00
Sept. 12.	Horace F. Wood—	
	Livery bill	3 00
19.	The Bates—	
	Banquet	525 00
1900.		
Mar. 23.	Reporter Publishing Company—	
	Report of annual meeting	418 00
Apr. 6.	Hogan Transfer and Storage Company—	
	Delivery of annual reports	23 04

April 13.	Indianapolis Book and Stationery Company—	
	500 jackets for cloth bound books	$6 25
24.	Postage	10 00
May 22.	Postage	10 00
June 19.	Reporter Publishing Company—	
	300 circulars	2 50
19.	C. E. Hollenbeck—	
	400 circulars and 1,000 programs	11 75
19.	F. C. Donald, Central Passenger Association—	
	Expense during convention	11 00
19.	Elva I. Holdson—	
	Services as stenographer	15 00
27.	F. C. Donald—	
	Circulars	3 00
	Total	$1,214 99

RECAPITULATION.

Total amount received	$2,889 57
Total amount expended	1,214 99
Balance	$1,674 58

Which amount is now on deposit in the Indiana National Bank.

THEO. P. DAVIS, Treasurer.

THE PRESIDENT: What will you do with the report, gentlemen?

A MEMBER: I move that the report be referred to the auditing committee. I think that is the usual motion.

THE PRESIDENT: I don't know that we have an auditing committee, but we can make one.

THE SECRETARY: It is easy to appoint one; there is none provided for in the by-laws.

THE PRESIDENT: It is moved and seconded that the report be referred to an auditing committee of two to examine the report of the treasurer and report at this meeting of the association. Those in favor of the motion will say "aye;" contrary "no."

The motion was adopted.

THE PRESIDENT: The auditing committee will be announced a little later.

The next in order, gentlemen, is the reports of committees. The

first is the committee on jurisprudence and law reform. Is there a report from that committee?

MR. W. H. H. MILLER: The meeting of the committee was advertised for last night, but I was sick and unable to be present. Whether those who were present have any report to make I don't know.

THE SECRETARY: Mr. Miller, the only member of your committee present was Mr. Braden Clark, who decided not to make any report.

MR. W. H. H. MILLER: There is one matter I may present on my own responsibility. It was resolved at the last meeting that this committee should make a draft of a law with reference to the assessment of political contributions upon candidates for judges. I have drafted a law of that kind. I can read it and submit it to the association if it is desired that it be done in that way, without passing it around formally to a committee. I have it in my pocket now.

THE PRESIDENT: What are the wishes of the association? Will they hear the draft of the law prepared by the chairman of the committee on jurisprudence and law reform without action upon it by the committee?

MR. P. W. BARTHOLOMEW: I move that we hear it.

THE PRESIDENT: That may be taken by consent. The chair hearing no objection, Mr. Miller will please read.

Mr. Miller read the draft of the law as follows:

AN ACT MAKING IT UNLAWFUL FOR ANY PERSON TO SOLICIT OR RECEIVE POLITICAL CONTRIBUTIONS FOR CAMPAIGN PURPOSES FROM CANDIDATES FOR JUDICIAL OFFICES, OR TO GIVE OR MAKE SUCH CONTRIBUTIONS BY SUCH CANDIDATES, AND FIXING THE PUNISHMENT FOR SUCH OFFENSES.

SECTION 1. *Be it enacted by the General Assembly of the state of Indiana,* That it shall be unlawful for any person to solicit or re-

ceive from any other person who has been nominated or in any way designated as a candidate for election to a judicial office, and who is at the time such candidate, within the state of Indiana, any sum of money, promise or thing of value whatsoever, as a contribution to any fund to be used in promoting or conducting the political campaign for the election at which he is to be so voted for as such candidate.

SEC. 2. It shall be unlawful for any person who has been nominated or in any way designated as a candidate, and who is at the time a candidate for any judicial office in the state of Indiana, to give, pay or deliver any money, promise or thing of value to any person as a contribution to any fund to be used in conducting or promoting the election or political campaign at which he, such nominee, is to be so voted for as a candidate.

SEC. 3. Any person violating the first section of this act shall, upon conviction, be punished by a fine of not less than five hundred dollars and not more than one thousand dollars for each offense.

SEC. 4. Any person violating the second section of this act shall, upon conviction, be adjudged to have forfeited the right to hold any office to which he may be or may have been elected at such election.

THE PRESIDENT: What is the will of the association upon the subject? If I may be allowed to make a suggestion based upon the practice in some other bodies of this kind, it would be this: that the association first determine whether the general scope of the bill, its purpose and objects, meets with the approval of the association, and then, if it does, that the bill be recommitted to the committee on jurisprudence and law reform, with direction to present it at the next session of the legislature and urge its passage. If that is your view of the way to proceed, will somebody make some

motion which will take the sense of the association upon the merits of the question? Ought there to be such a law?

MR. P. W. BARTHOLOMEW: Mr. President, I move that this association indorse the bill as presented by the committee.

THE PRESIDENT: It is moved and seconded that the association indorse the bill as read by Mr. Miller. Are there any remarks?

MR. W. A. PICKENS: Mr. Chairman, I had supposed that the first question to come up here would be on the report of the committee, whether the report should be received, and then whether this should afterwards be acted upon. However, that is immaterial. There was a very important matter referred to this committee at the last meeting of this association. The executive committee made this report. The third paragraph: "Your committee respectfully submits, further, that the law of this state concerning corporations is in a confused condition. It therefore recommends that the committee on law reform be instructed to report at the next annual meeting upon the propriety of the codification of the law on this subject, and if such committee shall reach the conclusion that the law on this subject should be codified, it shall report a bill to that effect." It appears that this committee hasn't given any attention whatever to this recommendation, at least so far as its chairman knows. There doesn't appear to be any other member of the committee present; if so, he hasn't offered any suggestion. It seems to me that that matter ought to have some consideration from the committee.

While I have the floor I shall take occasion to say something about the proposed bill. It seems to me that it ought to be entitled "A bill to encourage perjury." We know that it will not cut off political campaign assessments. And we know this, too, that the lawyer who has not character enough to ally himself to some political party and take an interest in the political campaigns has not ability enough to achieve much prominence in the profession, or to qualify himself to sit upon the bench as a judge. In the first

place, you can not prevent these assessments; in the next place, if you can, they ought not to be prevented. There is no reason why a lawyer should not participate in political campaigns. There isn't any reason why, when he becomes a candidate for any political office, he should not pay his part of the campaign assessment. Of course, we do not believe that any assessment should be made except for legitimate campaign expenses. When they go beyond that, the law already provides for the regulation of such matters. Now, when a man becomes a candidate for judge and wants the office, it can not lower his dignity and it can not discredit his standing as a judge to take part in the campaign and help his party to a successful victory, and he owes it to the party that has honored him with the nomination to contribute his proportion to the legitimate expenses of the campaign. I am decidedly opposed to such a bill as that, in the first place, because campaign assessments can not be prevented by any such law, and second, if they can be, they ought not to be prevented.

MR. CHARLES MARTINDALE: Mr. Chairman, to my mind the judicial office in any state is a very high and sacred function. I have always been in favor of an appointive judiciary and a judiciary which would serve for life or during good behavior, believing in that way that the judiciary are farthest removed from the influence of party feeling. I can conceive of nothing which lowers the tone of a judiciary more than that the successful candidate should come to the bench with the sweat and soil of a political campaign upon his garments. I am heartily in favor of anything which will protect the candidates for judicial offices from the influences of a partisan campaign committee and will set apart the men who will serve upon the bench as men who are marked and are set apart from other functions of the government. The judicial office can not be exalted too much. It can not be made too sacred. No man who will lend himself to the course and methods of a partisan campaign is fit to sit upon the bench. He has not a sufficiently exalted

opinion of the office to which he aspires. I think that this bill will tend to exalt this office. It will tend to set apart the men who are candidates for that office from the candidates for offices of purely an administrative or political function, and I am in favor of anything that will exalt the dignity of the bench and the kind of men who shall occupy that exalted station. I do not agree with my brother that political assessments can not be prevented. I am not so pessimistic as that. Nor can I consent that they ought not to be prevented. I am not impractical in this matter, for I know well that political campaigns can not be conducted without some expense; that they can not be conducted without contributions to pay those expenses. But the contributions which have been made and are being made for elections are far beyond the legitimate expenses of campaigns; and while the time has not come for us to pause and consider whether all political assessments should be abolished, we can at least go so far as to protect the judicial office from the influences of those things which have a tendency to corrupt our politics. For these reasons I am in favor of the policy of this bill, its general features, and I believe that it ought to be referred to the committee, with a recommendation that they urge its passage at the next general assembly.

THE PRESIDENT: With regard to the attitude of the question before the association, you will remember, gentlemen, that the report has not come in strictly as a report of the committee, but is a report from its chairman, and I suppose it will not be at all inconvenient to act upon it in this direct way, instead of going through the routine of having the committee formally act upon it. The motion before you, then, is that the association approve the bill, in its principles and purposes, as read.

MR. MILLER: It was suggested to me as I was taking my seat that this bill does not provide any punishment for a candidate for judge who has been guilty of loose practices and is defeated. I am aware of that, but it occurs to me that, in the first place, he would

get about enough punishment if he was defeated, without the infliction of further punishment, and in the second place, the great purpose of that sort of legislation, if it is adopted, is as a deterrent, to prevent the thing being done, and the man who has any idea of being elected is not going to take his chances on anything of that kind.

MR. S. A. HAYS: Mr. Chairman, I have no sympathy, personally, with political assessments for the purposes of corruption. Neither have I any sympathy with assessments which go beyond the legitimate expenses of a campaign, and I heartily indorse the compliment which my brother has paid to our judiciary and our judges. I certainly think that that sentiment is indorsed by all the members of this association, and is attested by the history of the judiciary of our state in the past, and the judiciary that we have at this time certainly does not suggest to us that the men who have been placed in those honorable positions need to be surrounded with any protection different from that which surrounds other officials, from the governor down to the justice of the peace. I do not believe it follows because a man contributes to his party for the legitimate expenses of its campaign, after having had the support of the party to nominate him for the office, that he is in any way disqualified or discredited from sitting upon the bench as a judge. I have no sympathy with any such sentiment. I have no sympathy with any sentiment which assumes that because a man contributes to the expenses of the campaign, and thus assists the party who has honored him with its nomination in electing him to the office, he thereby fails to rise to the standard of the judiciary in the past because of that contribution. I say I do not think it is within the province of this association, nor is it creditable to the intelligence of the lawyers of this state who are familiar with the history of the judiciary in the past, to undertake to throw around them a cloak, and to say publicly that they think it is necessary to protect

the judiciary from being dishonest. I have no sympathy with such a bill as this at all. I think it is a disgrace, and casts an insinuation upon the judges who now occupy the bench and upon those who occupied it in the past. I presume there is not a judge who sits on the bench to-day who has not in the past and during his candidacy, and in the campaigns that he has made, contributed to his party organization to meet the necessary expenses of the campaign; and yet, do you say that these distinguished men, because they have done that, must have this kind of an insinuation cast upon them? That they have been corrupt or dishonest because of that fact? I want to say for our judges that they do not need any such protection. Neither do I believe in making party paupers out of candidates for judicial offices. We all recognize in this day that expensive campaigns must be conducted and large legitimate expenses must be paid. Is the candidate for the high office of judge, and who has a large and remunerative position given him, is he not to be called upon, is he not to be required to pay his proportion of such legitimate expenses? Shall I pay the assessment or the contributions which the judge who draws the salary is to receive? Not at all. I say, therefore, gentlemen, that I have no sympathy whatever with the bill that has been read. I see no reason why the judge upon the bench, as well as a governor, shall not reasonably and properly contribute to the legitimate expenses of the party whose honors he is seeking, and by whose favor he receives his compensation. I want to say, also, I would be sorry indeed to see this honorable body put upon its records an approval of a bill of this kind. If you want to condemn party corruption, if you want to condemn political assessments, why select candidates for judge? Why not select the governor, who is the representative of all the people? If you want to put upon your records your condemnation of this unlawful practice or these unlawful assessments, why not apply it to all the candidates for all the offices, and then it will be received by the people of the state as a condemnation of the princi-

ple which is applicable to all candidates alike. But don't say to the judges upon the bench, "You need protection which it is not necessary to give to the other candidates for the other offices in this state." I am decidedly opposed to the principles involved in this bill.

MR. P. W. BARTHOLOMEW: I think our brother loses sight of the main point of this bill. The office of judge is one that is supposed to be non-partisan. When a candidate is elected and takes his seat on the bench, he is not a republican, or a democrat, or a populist, or a silver republican; he is a judge—a judge for all the people.

MR. HAYS: Permit me, brother. How about the governor? Is he not the governor of all the people?

MR. BARTHOLOMEW: I will answer you in a moment. The judge upon the bench may pass upon my case. He may be a republican, I may be a democrat; a democrat on one side, a republican on the other. A judge must be absolutely, in theory at least, impartial between these parties. In other words, the law presumes that he is absolutely blind to the political situation before him. Now, we know, even among our ward heelers in our own city, if a candidate for judge would go out and make a political speech, that kind of a campaign for the office of judge would shock their ideas of propriety. So high has become the standard in the minds of the people, that even with the lowest politicians the candidate for judge is looked upon as a man who is to hold a non-partisan office. Now, I believe the objects sought to be accomplished in this bill would be better accomplished by providing for a primary election of candidates for judge, and that the man nominated should go on both tickets. Then, of course, he would not pay both assessments. He would not be the candidate of one party. He would go on the bench free. But this bill is in the right direction. Theory is one thing, and practice is another. The candidate for judge, the way things are now in both parties, is simply treated as the candidate

for any other office is treated, and yet the judge can not make the same campaign that the other candidates can make. He has to preserve a certain amount of dignity before the people, and I believe that the man who is a candidate for a judicial office, whether it be the circuit court, the superior court, the supreme court, or the appellate court, should be absolutely free from any partisan control whatever during the campaign. I believe the bill is in the right direction, and, while I would indorse any law that would prevent the assessment of any candidates for office, I believe this is the step that ought to be taken first.

MR. MILLER: I did not introduce that bill because of an original impulse of myself in that direction, but because the committee was directed to prepare it. Nevertheless, I most heartily approve of it. I approve the spirit of it. I approve it, not for the reasons mainly that have been suggested here, but because I believe that it is due to the men who run for those offices, the principal emolument of which is the honorable position itself. It seems to me that these men should be protected against the efforts of a campaign committee to take twenty-five per cent. or fifty per cent. of their first year's salary as a condition of their having fair treatment in the campaign and to give them even a chance of election. Everybody knows that no judge, and especially no judge in Indiana, ever gets anything in the way of money out of a judicial office. He gets a bare living salary, if he is economical, and scarcely a living salary as compared with the other members of the profession of his standing. And it seems to me that, for that reason, as a protection to them in that way, the purpose of the bill is a good one. I think that anything that tends to separate the judicial office from other offices, anything that tends to put the incumbent of a judicial office up above the plane of his fellow-citizens, is greatly in the interest of the administration of justice. I believe in hedging the judges about with all manner of forms. I believe that it would be an excellent law that would prevent any judge from sitting with

his feet upon the desk in front of him while he is hearing an argument. I think it is a good law that would require a judge to put on a gown when he goes to his seat, and would have that seat so arranged as that no lawyer could approach and whisper to him as he sat on the bench. There are some things, which we have not been prone to look upon with the utmost favor, in which some of the other states have greatly the advantage of us. A few years ago I was in South Carolina. I was in court. I saw the way justice was administered there. I saw the judge go up on a bench that was far removed from any of his fellows, clothed in a gown. Then I saw the formality with which court was opened, the formality with which a prisoner was arraigned, and everything tending to impress upon the audience, upon the public that came in there, the dignity of the judicial proceeding and the fact that in the administration of justice there was a power and a dignity and an honor that was far beyond the ordinary transactions of life. I believed that to be a most impressive proceeding. I don't think we can do too much, as I say, to separate the judicial office from the ordinary office. Take the ordinary county offices, take the ordinary state offices—a man might expect in the past—I don't know how it is now—to get rich out of them in one or two terms. But nobody ever heard of a judge getting rich. I say the law should be such that the man who aspires to go upon the bench may go there and feel that his salary is his own, and that no chairman of a political committee shall dare to hold him up and say, "Now, stand and deliver."

MR. GEORGE W. GRUBBS: Mr. President, I indorse especially the last remark made by Mr. Miller. About the provisions of the bill which is now presented to the association for its action, and which we are asked to indorse, and to have engraved upon the law, I think it is entirely too sweeping in its provisions. It provides, for instance, that it shall be an offense for any one to ask a judge for any contribution, and it also makes it a criminal offense for

him to contribute. The second section absolutely prohibits a candidate for a judicial office from making any contribution to any political campaign. Now, this bill proceeds upon the assumption that a candidate for a judicial office disqualifies himself to sit upon the bench by making a contribution for political purposes. It either stands upon that theory, or it stands upon the theory that any assessment made against any candidate at all for any office is wrong, and it applies just as much to the judicial office as it does to any other office. Now, the first assumption that a man who makes a contribution, even a judicial candidate who makes a contribution to defray the legitimate expenses of the campaign, thereby disqualifies himself to sit upon the bench and to discharge his judicial duties, I do not indorse. I do not believe that this bill can stand upon that principle. I know I have as high an estimate of the judicial office as any one ought to have. I have contributed to campaign expenses, when I have been a candidate and when I have been an individual citizen. I have done it voluntarily, because I believed it was right, because I believed that I ought in justice to contribute something. I have done it even as a candidate for a judicial office, and I have never been conscious of the fact that that act has in any wise disqualified me to discharge the duties which I have been called upon to discharge upon the bench. I believe I bespeak the experience possibly of other men who have sat upon the bench. And so I doubt the propriety of the action which we are called upon to take to-day. Now, I do not want any misunderstanding of where I stand upon this question. I am just as much against campaign assessments, the exorbitant assessments that are made against all officers, as any member of the association, I am sure, and if there is anything I detest in the world, it is the fact that it is possible—and not only possible, but it has been the practice—that campaign committees have held up judicial officers and other officers in this state and compelled them to contribute. But as a man, as a citizen, believing in parties and in

party contests, and believing that the very salvation of this government rests in the contests in which we are, in every campaign, engaged, and which qualify us to love our country and its institutions, I believe I have the right, as I believe every other man has the right, to contribute, if he desires to do so, a reasonable sum as a campaign assessment. By this bill you prohibit a man from paying even if he desires to do it, and you make a man a felon who has the temerity even to ask the judicial candidate whether he can not contribute toward the payment of the legitimate expenses of the campaign. I doubt, as I say, the propriety of the bill which has been presented.

MR. FRANK B. BURKE: Mr. President, I have been quite interested in this discussion. I don't know much about the provisions of this so-called bill, and there is much to be said on both sides of the proposition. I think, however, that these matters are hardly proper ones to be considered by a body as dignified and intelligent as the bar association of the state of Indiana ought to be. I remember two or three years ago, at a meeting presided over by Mr. John G. Williams, who was then the vice-president of the association, there was quite a discussion over a resolution to get the democratic and the republican state conventions to agree upon a ticket for supreme judges, and the president was solemnly resoluted to appoint a committee consisting of a member from each district to bring that about. The absurdity of the proposition was so apparent to me that I opposed it. I hoped that the bar association of Indiana would rise above matters of that kind, believing that it would come to nought. And nothing ever did come of it. General Harrison, who was president, did not even dignify the resolution by acting upon it. Being a statesman, a patriot and a practical politician, as every American citizen ought to be, no attention was ever paid to it by either the president or the bar association. No attention will probably be paid to this bill. Yet, there are some things, and this is one of them, that properly belong to the different

state conventions for effective results. It is easy to get a resolution through the democratic or the republican conventions of this state that no candidate for judge shall pay or be required to pay a political assessment.

Now, there are some things suggested by Mr. Miller which, while I am not prepared to say I am in favor of them, yet I think are worthy of consideration by the bar association. One is that we surround our courts with that dignity and pomp that impresses and will impress upon the sovereign citizens of the country the power and importance of the judiciary. There is nothing, Mr. President, to prevent this bar association taking steps to clothe our judges with gowns. There is no limitation placed upon the power of the circuit judge in providing for the construction of the bench in his court room and to surround it with a barbed wire fence in order that the members of the bar may be kept away from him. There is nothing in the law that prevents his being preceded or followed by his bailiff, clothed in a proper manner. All of these things, Mr. President, add to the dignity and the importance of the bench. It ought to be carried further and applied to our house of lords, and every executive officer ought to be preceded by his crier and his herald. Those tendencies, if you please, those insignia of absolute power ought to find no place in a republic, and much less ought they to be suggested in a meeting made up of the brains and intelligence of one of the strongest states in the union. I hope that that proposition will be considered. I think it ought to be discussed. I think we ought to know here and now, these men who come from all parts of Indiana should say whether the suggestion should be followed, whether the judge on the bench is a master or servant of the people, whether he shall owe responsibility to popular approval and his own conscience, or whether his power and influence shall be such as he may make it, surrounded by the pomp and glory of judicial and arbitrary power. I think, Mr. President, that this proposition embodied in the bill ought to be rejected. I

think that the time of this association ought to be taken up with an extension of the terms of judges and an increase of their compensation. It is true that in Indiana men get rich out of county offices. It is true that in Indiana the office of clerk of a court, two clerks of a court, if you please, in the old fourth judicial circuit, that could be filled by any one who could write a good legible hand, netted the holders from fifteen to twenty thousand dollars each, while the judge on the bench received a paltry compensation of twenty-five hundred dollars a year for his services. That is unfair. It is unjust. And instead of putting on the records of this association the indorsement of a bill that will carry with it an intimation that it is necessary, in order to preserve the dignity of the office, to throw around judges a protection of this kind, let us get their salaries raised, so that the offices will invite, if you please, able, conscientious and earnest men to take their position upon the bench. Think of it, Mr. President! The judges of the supreme court, men of standing, and of whom the bewhiskered statesmen that have assembled in this room said that the honor is sufficient compensation, give six years of the best part of their lives to the services of the state at the paltry compensation of four thousand five hundred dollars a year, I believe. The appellate judges give four of the best years of their life to the service of the state at thirty-seven hundred and fifty dollars a year—a compensation that a clerk or bookkeeper can in all probability demand at the hands of a strong corporation.

Let us refer this matter, Mr. President, to the next state conventions, and request them to put a plank in their platforms that will cover the question. And let us take up the proposition of elevating the bench in the proper way, by giving it that proper compensation that will invite the dignity and ability and stability to the bench of Indiana that characterizes the bench of other states—and the bench of Indiana, by reason of this lack of compensation,

has not at all times, Mr. President, been up to the standard of other states.

THE PRESIDENT: Are you ready for the question, gentlemen? The motion is that the bill as read by the chairman of the committee on jurisprudence and law reform has the indorsement of the association. All those in favor of that motion will signify it by saying "aye."

MR. W. A. KETCHAM: Will it be in order to divide that, and vote on the first and second sections of that bill separately? I came in late, and I did not hear all the discussion. I move that the bill be divided, and that we vote on the second section of the bill first.

THE PRESIDENT: The motion is that the vote on the two propositions contained in this bill be taken separately, and the question is whether the association approve the first and third sections of the bill. Those are the sections forbidding the solicitation of contributions from candidates for judicial offices and fixing a penalty. Those in favor of taking the vote in that way, by dividing it, will signify it by saying "aye;" contrary, "no." The "ayes" have it. The question then recurs upon the first and third sections of the bill. Those in favor of approving the provisions of the first and third sections of the bill, those relating to the solicitation of contributions from judicial candidates, will signify it by saying "aye." Those opposed will say "no." The "ayes" seem to have it, but the chair is uncertain.

A division being called for, a rising vote was taken, which resulted in the adoption of the motion by thirty-seven "ayes" to sixteen "noes."

THE PRESIDENT: The question now recurs, gentlemen, upon the second and fourth sections of the proposed bill. Those are the sections which make it an offense for a judicial candidate to make a contribution, and providing a penalty. All those who approve

these sections of the bill will signify it by saying "aye;" those opposed "no." The "noes" seem to have it.

A division being called for a rising vote was taken, which resulted in the defeat of the resolution. "Ayes" nineteen, "noes" thirty-eight.

MR. BARTHOLOMEW: Now, Mr. President, there is another matter that was referred to this committee at the last session of the bar association, which was as follows, on page 200 of the printed proceedings of the last session, and reads: "Believing that this association should lend its influence for legal reform wherever, in its judgment, reform is necessary, and being convinced that the use of railroad passes by the judges of our courts tends to lessen the confidence of the bar and people in the decisions of our judges, we are in favor of such legislation and provision for our judges as will do away with the use of such passes." That was referred to this committee, with instructions to report a bill on that subject, and from Mr. Miller's statement I presume that they have overlooked that part of their duties.

THE PRESIDENT: I take it that we may infer from what has been said that there is no report upon that subject.

MR. MILLER: We have had no meeting upon that subject.

MR. BARTHOLOMEW: Now, Mr. President, I want to move the adoption of this resolution, and that the legislative committee be instructed to frame that bill, a bill in conformity with this resolution. I move that the resolution be adopted, and that the committee on legislation be instructed to frame a bill in conformity with the resolution.

THE PRESIDENT: Is it intended to mean by that the committtee on jurisprudence and law reform?

MR. BARTHOLOMEW: Yes.

THE PRESIDENT: The motion, gentlemen, is to adopt the resolution just read, which has been once adopted by the association, and to refer the matter again to the committee on jurisprudence

and law reform, with directions to report a bill. Are there any remarks?

MR. BARTHOLOMEW: Now, Mr. President, I suppose that committee could only report to the legislature, unless we have a special session. With reference to this matter, I believe I express the sentiments of every member of this association and nearly all the members of the bar of Indiana when I say we approve of the sentiment therein expressed. If we had a law on our statute books that read like this in our fee and salary law: "The salary of the supreme judges shall be forty-five hundred dollars per year, and whereas the railroad companies furnish most of the litigation before that court, therefore, resolved, that the railroad corporations shall pay all transportation of the judges in addition to the fixed salary above mentioned," we would accomplish just exactly what is being accomplished now by the railroad pass. That is really the fact in Indiana to-day, from the circuit and superior courts to the appellate and supreme courts. True, there are a certain number of judges of those courts who refuse to accept passes, but the vast majority of the judges on our benches to-day are deciding cases for and against large railroad corporations with the passes of those corporations in their pockets, and the time has come when the people of Indiana ought to speak out on this matter, and when the legislature should be called upon by the members of this State Bar Association to pass a law to provide for the transportation of those judges by paying them a salary larger than at present, by paying them a salary sufficient for their needs, and enabling them to live in a proper manner and in dignity while holding their offices. The compensation should be so large as to provide amply for the payment of the transportation of the supreme and appellate court judges every ten days in going from their homes to the capital and from the capital to their homes. Why, we have got so far along now that we have abolished the fee system with justices of the peace. A justice now don't have to convict a man to get his dollar

fee. We have got beyond that. In Indianapolis, at least, we pay our justices of the peace a certain salary now, and we find it has been an improvement. Now, there is no doubt that ninety-nine one-hundredths of the judges of Indiana are unaffected by the presentation of these passes by the railroad companies. Yet we had an example not long ago in the appellate court of a man that might have been influenced by that very thing; and we have had some decisions within the last few years that have seemed as if they were prejudiced in favor of these corporations. And our supreme court went so far that we had to have at the last session of the general assembly legislation to get away from some of the decisions of our supreme court where the people felt that they were not getting equal and exact justice before the courts of Indiana. So, I say, the time has come when somebody, somewhere, ought to move to place our judges in such a position that they will have the absolute confidence of the people and of the bar of Indiana. And I believe this is a step that ought to be taken; I believe every judge in the state of Indiana would applaud and approve such action as is suggested and indorsed by the bill if it can be enacted into law by the next general assembly.

A MEMBER: Mr. Chairman, I rise to a point of order. This motion, it seems to me, is out of order. In the first place, this resolution is already in the hands of the committee, and we can not do anything except to direct the committee to act. The motion here is out of order for another reason. According to the construction of the motion, it requires the committee to report to the legislature; that is, to prepare a bill and report the bill to the legislature. This association, I take it, would not want to put in the hands of any committee the power to draft any bill or law, or anything else, and report it to the legislature without voting upon it. From every standpoint I think the motion is entirely out of order.

MR. BARTHOLOMEW: Mr. President, I want to explain this

matter. This motion simply requires the committee to frame a bill and report to this bar association. Now, the committee failed to make that report, except orally. They haven't acted on the subject. Now, this failure of the committee to act gives this association jurisdiction of this motion.

THE PRESIDENT: As to the point of order, I suppose it is quite in order for the association, the matter being in the hands of the committee, and not acted upon, and information having been received in answer to an inquiry that the matter had not been acted upon, to take any further action they may desire, either to direct the committee to act or to take the matter out of the hands of the committee for action directly by the association. I regarded this motion as equivalent to a motion to direct the committee to act and to report a bill. Now, if the association, upon hearing the resolution, sees fit to act upon the merits of the case, and declines to direct the committee to act as heretofore directed, that disposes of the matter.

A MEMBER: What is the motion?

THE PRESIDENT: The motion is in form to adopt, or, I might say, re-adopt, the resolution adopted at the former meeting, directing the committee on jurisprudence and law reform to report a bill prohibiting the acceptance and use of passes by judges upon railroads. It simply directs the committee to report on that.

A MEMBER: When?

THE PRESIDENT: That is not stated. I take it, unless it is so stated, it would mean at the next meeting of the association.

A MEMBER: Isn't it presumed that it will do just that thing?

MR. BARTHOLOMEW: They haven't acted upon it, and, as they haven't acted upon it, it is now beyond the committee and in the power of the association either to withdraw it from the committee or to act directly upon it now.

A MEMBER: The committee hasn't said that it would not act upon it, and it is with the committee now; and there might be a

motion to take it from the committee, but it seems to me, as I understand it, that you can not recommit a bill that is already with the committee.

MR. MILLER: There will be a new committee appointed, will there not?

THE PRESIDENT: Yes, there will be.

MR. BARTHOLOMEW: My motion was simply to instruct the committee to report on the subject.

THE PRESIDENT: When?

MR. BARTHOLOMEW: At this meeting.

THE PRESIDENT: That would make a new motion of it. In regard to the other point of order, gentlemen, while I take it that it is quite true that, the subject-matter having been committed to the committee once, will remain there until acted upon, unless some other action is taken by the association, yet I take it that the association may, if the matter has not been acted upon, give such orders to the committee as may seem desirable. Now the motion is, gentlemen, that the committee be directed to report in accordance with this former resolution at the last meeting of the association, a bill prohibiting the acceptance and use of railroad passes by judges. Are you ready for the question?

MR. FRANK B. BURKE: Mr. President, I think that resolution ought to be permitted to die in the committee. I object to the phraseology of the resolution. It is not founded in truth nor fact, and I will say that Judge Bartholomew does not represent my sentiment as a member of the association when he says that there is a crying need for action of this kind, or that the appellate or supreme court judges of this state have been influenced in their decisions upon any question submitted to them, either by their politics, by the size of the political assessment they pay, or whether they have a railroad pass in their pockets. Now, if a lawyer will take that resolution and carefully consider it, I don't believe he, or any other member of this association, will vote for it. I don't

believe that Judge Bartholomew would vote for the insinuation that that resolution carries with it himself, and I think it ought to be permitted to die where the committee, I assume without any discussion, are intending to let it die.

MR. BARTHOLOMEW: Well, Mr. President, I don't intend it shall die. But I don't want Senator Burke to misunderstand me. There is nothing in the wording of that resolution that, it seems to me, can be distorted so as to cast any reflections upon any judge as to his past decisions or as to what he may do in the future. It simply says the people would have more confidence in them. Now, theory is one thing and practice is another. We know that the people haven't the confidence in our judges that they should have, for the reason I have indicated, and I expressly disclaim in anything I said to mean that any judge, so far as I knew, was influenced by the fact that he held a pass from any railroad.

MR. BURKE: Mr. President, if the association will just indulge me for a moment, this is the resolution: "Believing that this association should lend its influence for legal reform, wherever, in its judgment, reform is necessary." Now, it is the judgment of this association, if it adopts this resolution, that the reform is necessary according to the phraseology of the resolution itself. Reform what? The use of railroad passes by the judges; because it tends to lessen the confidence on the part of the people in the decisions of our judges. I say that that acts on the assumption, and it is consistent with the judge's remarks, that the people believe that the judges are influenced. No member of the bar believes it, with the possible exception of the judge. I don't know whether the present judges use railroad passes or not. I know that I have heard of judges for whom some attorneys for railroads had tried to get passes as a mere courtesy, out of the friendship of the lawyer for the judge, who was a fellow-townsman, that the judge might, out of his meager salary, be saved the constant expense of having to pay his railroad fare to and from his home where the law requires him to reside,

and live, and be a citizen—and he was unable to do it. Now, this proposition about judges traveling upon passes in the state of Indiana is simply an assumption. I don't believe there is any truth in it. I know of instances where men have tried to get passes for judges and couldn't do it—the solicitation coming from attorneys for railroads themselves, and not from any solicitation of the court. Of course, they may get passes on some railroads. I have a pass on a railroad myself, and I am not a judge. The railroad is about forty miles long, and it would cost me about forty dollars to get to it. It was sent to me by the attorney of the road, who was a personal friend of mine, with the information that if I ever got to his road it wouldn't cost me anything to ride on it. Now, probably there are some judges who have passes like that, that they never could use. But I say that the phraseology of this resolution proceeds on the assumption that the use of railroad passes by the judges of the different courts of this state weakens the confidence of the bar and the people in the judges, and that reform is necessary. I deny that, and I don't believe that the association believes it, and if this resolution had been discussed or considered at the last meeting, I don't believe it would have been passed.

THE PRESIDENT: Are you ready for the question? The motion is that the committee on jurisprudence and law reform be directed to make a report in accordance with this resolution, and that it make its report at the present meeting of the association. Those in favor of the resolution will signify it by saying "aye;" those opposed "no." The chair is uncertain.

A division being called for, the rising vote resulted in twenty-six "ayes" and twenty-six "noes."

MR. DAVIS: Well, it is up to the chair.

THE PRESIDENT: Do the by-laws make it incumbent on the president to cast a vote in case of a tie?

THE SECRETARY: There is nothing in the by-laws requiring the president to cast the deciding vote.

THE PRESIDENT: My impression is, and I shall so decide, that the motion is lost. Any member may appeal from the chair's decision to the association.

MR. BARTHOLOMEW: The chair ought to vote one way or the other to decide the question.

THE PRESIDENT: It is not incumbent as a duty upon the chairman of the meeting to cast the deciding vote, and, believing it is not his duty, I shall not vote unless so directed by the association. The chair's decision is that the motion is lost.

The next report is from the committee on judicial administration and remedial procedure.

MR. JOHN G. WILLIAMS: Mr. President, that committee had a meeting last evening, but there was nothing before it that they desired reported to the association; no action was necessary, as they deemed, at that time. At the meeting of the association a year ago, that committee was in charge of the constitutional amendments, one concerning the supreme court judges, and the other concerning the qualification of lawyers. But, at that session last year, those two amendments, by the recommendation of the executive committee, were referred to the committee on publications, with instructions to take such steps as might be necessary to insure their adoption at the coming election this fall. The committee that had charge of them had some views about the steps that should be taken, but they did not feel at liberty to make any report as a matter of courtesy at this time, waiting till the committee on publications shall make its report, and when they have done so, the committee on judicial administration and remedial procedure may, either individually or otherwise, have some suggestions to make further to the association.

THE PRESIDENT: Has the committee on legal education any report?

MR. SIDNEY B. DAVIS: Mr. President, the committee on legal education and admission to the bar have a report, but from the

statement of Mr. Williams, I believe we have infringed somewhat upon the duties of the committee he has spoken of. We took it for granted that the amendments he referred to, one of them at least, particularly applied to the subject of legal education and admission to the bar. I will read the report as prepared by the committee, and, of course, if it conflicts with the report or action of any other committee, that matter may be corrected by the association.

LEGAL EDUCATION AND ADMISSION TO THE BAR

From "time immemorial" the legal has been classed as one of the "learned professions," but in Indiana, since the adoption of the present constitution, the only constitutional requisite to practice at the bar, as for dispensing behind the bar, is that one shall be a voter and of good moral character.

Shades of Justinian, Blackstone, Bacon and all the other mighty ones of a great calling, to what low estate has your honorable profession fallen!

Before a man is prepared for the acquirement of a legal education, he should have some literary learning, but there are many endeavoring to practice law without any adequate knowledge of the primary branches of an education. For the honor of the profession, and to secure for it a proper standing among the professions, this condition should not be possible. There is apparently, now, no protection against the admission of the illiterate and incompetent. Prior to the adoption of the present constitution an applicant for admission to the bar was compelled to obtain a license from two judges of the supreme court or two circuit judges. The law did not define the qualifications for a license, but did provide in one section that, upon a showing of certain facts, the applicant might be admitted to an *examination* for the degree of an attorney and counsellor at law.

Rev. Stat. 1843, Chap. 38, Part III, Art. 5, p. 660.

By clear implication, therefore, an examination as to qualifications was essential. The constitutional provision has caused the bar of Indiana to suffer in the estimation of the profession everywhere. Nowhere else does so loose and dangerous a rule exist.

Blackstone says, that "So early as the Statute 4 Henry IV, c.

18, it was enacted that attorneys should be examined by the judges, and none admitted but such as were virtuous, learned, and swore to do their duty. And many subsequent statutes have laid them under further regulations." And from the earliest times, in all countries where the attorney has plied his vocation, stress has been laid upon the necessity for the highest degree of preparation.

Says a late writer, in discussing the necessary preliminary preparation for the profession: "And if we consider the momentous questions which are confided to his skill, involving all that is dear to man, and remember that when life or property is at stake, or the poisoned shaft of calumny is quivering in the heart, his office it is to stand forth and shield the person, or vindicate the character, of those who are assailed, and who fly to him for protection or redress, we shall be more disposed to acquiesce in the justice of such descriptions, and it is well to erect a lofty standard. There is little danger lest men take an exaggerated view of the qualifications which are demanded by their profession."

In an address before the American Bar Association, Mr. Justice Brewer declares his conviction that if the legal profession is to maintain its prominence, a longer course of preparatory study must be required, and that a higher education is to-day the special need of the profession. "The door of admission to the bar must swing on reluctant hinges," he said, "and only he be permitted to pass through who has, by continued and patient study, fitted himself for the work of a safe counsellor and the place of a leader."

But in this state a long step backward was taken when the constitutional convention concluded to let down the bars, or rather, to use the simile of Justice Brewer, "took the door of admission to the bar off the hinges and threw it away, for fear that the legal profession might become too powerful and aristocratic." It is no doubt true that forty years ago business affairs of the community were simple, requiring but little legal knowledge to arrive at just conclusions. But progress from the simple to the infinitely com-

plex has been rapid, beyond the wildest dreams of the fathers. The teacher of the subscription school of that day could not obtain employment now in the humblest backwoods school district. The physician of that date, with few books and very limited pharmacopœia, who rode horseback through trackless forests, swam the swollen streams, carrying his limited stock of supposed restoratives in "pill bags," and administered heroic doses of phlebotomy, calomel and "peruvian bark" to the fever-stricken, who, in their innocency, believed that the country doctor worked miracles and raised the dead, would now be unable to gain a patient. Then lawyers had to deal with no great railroad or other corporations, with immense and varied interests at stake, and no complicated legislation for and against to unravel. No intricate and technical contracts, involving millions in money and the property rights of thousands, often drawn to deceive the unwary, were to be construed along the lines of myriad decisions of courts, often conflicting and inconsistent. No questions of negligence by corporations toward individuals; no trusts; no combines; only the plain a b c of the legal curriculum, as found in statutes and acts, with perhaps a slight acquaintance with Blackstone. But even then there were giants in our profession, to whom we still look for the bedrock principles of right and justice.

But if preliminary preparation is necessary, how much more important it is that the legal education should be the *broadest* and most thorough possible. This is necessary for the best interests of the student of the law, as well as for the protection of the community from the pettifogger and inefficient advocate. It is an injury to the individual to give him the license afforded by admission to the bar before he is prepared by a proper course of preparatory study. It has been the custom to admit young men who have had no preliminary preparation. Such persons at once begin to seek a practice, which must result in disaster to the man and to

such clients as may fall into his hands, and in bringing unmerited obloquy upon the profession.

The effect of insufficient legal preparation is evidenced in the great number of the decisions of our appellate courts reversed upon questions of practice and for defects in proceedings that any student of the law should be able to detect and avoid before admission.

Another result of our loose method of admission is the large class of "case lawyers," men who have no adequate knowledge of legal principles, and who are unable to apply legal principles with any discrimination. Unless such an one can find a "hog case" he is helpless. Before a candidate should be admitted to practice, he should have sufficient legal education to be able, when a statement of facts is given him, to apply legal principles to the facts and determine the legal rights of the parties, without recourse to the decisions; otherwise he will lead clients into a quagmire of errors.

It is held generally by the bar that the courts can not enforce rules for admission to the bar, other than those of the constitution, and thereby keep out applicants who comply with the constitutional requirements.

This state of things presents a strange anomaly. Attorneys are officers of the court, and under the control of the court in the discharge of their duties, yet the courts may not fix any qualification for admission to the office. If this position be correct, then the act of 1881 is unconstitutional. The act seems to distinguish two classes of applicants, viz.: Such as, standing upon their supposed constitutional rights, demand admission as a right, and those who will voluntarily submit to examination by the court or committee. By the terms of the act only those who submit to examination are entitled to be enrolled. If this construction shall be held correct, then the act is ineffective, admission alone being sufficient to permit the person admitted to practice; and by Sec. 963 of the revision any person admitted shall be entitled to a certificate of admission,

which shall authorize him to practice law in all the courts of this state.

The supreme court, in the case of "Petition of Leach *ex parte,* 134 Ind. 665," held that neither the constitution nor the statute of 1881 is a limitation upon the right to membership; but it holds that "the right of the voter of good moral character is secured." The court, however, reached the conclusion that the constitution did not prohibit the admission of persons who were not voters, and that a woman is entitled to admission, holding that persons not voters might be admitted under such rules and conditions as the court might prescribe.

We have, therefore, the anomalous condition that one class of persons may be forced upon the courts without regard to fitness, whilst another class, whom the court holds are citizens, and entitled to all the rights and immunities of citizens, and may possess superior qualifications, can only be admitted to practice law upon such terms as the court may fix, or may be excluded altogether. A former attorney-general has classed the Leach decision among those which he denominated, irreverently, "petticoat decisions."

There being, then, no legal means to protect the profession and public from the results of ignorance, it becomes a grave question what can the bar do to mitigate the situation? This association, having at heart the best interests of the profession and of the courts, of which they are sworn officers, and of the great public which looks to them with confidence for the protection of individual rights, owes it to society, the courts and itself to correct, as far as possible, the evils resulting from the wrong committed against society by the free admission to the bar. There is legislation enough to protect the community from ignorance in other callings. The doctor, druggist's clerk, teacher, dentist, pharmacist, all are subjected to examinations as to their qualifications in this state. In other states many other callings are subjected to the same requirements. The enactment of such laws has been brought about

by the concerted action of those in the several callings. And upon the bar rests the solemn obligation to labor earnestly and unceasingly for an amendment to the constitution which will relieve the profession from this unfortunate situation. No one else will. But, pending the adoption of such measure, the members of the bar can do much by discouraging the unfit who apply for admission; encourage the worthy to prepare themselves before attempting to practice; aid the courts in keeping out the unworthy; insist upon the examination of candidates for admission, under the statute. The threat of an examination will deter many. Then no attorney should move the admission of a candidate unless he knows the applicant has at least some qualifications. Then, too, the bar could do much to rid itself of unfit persons if by united action upon the part of those who, recognizing the high qualities requisite to an honest and honorable profession, would vigorously prosecute the legal quacks, the ambulance lawyer, the maintainor, barrator, champertor, the suborner, and all the tribe of vampires that prey upon the community and blacken the fair name of an honorable profession. But this work can not be done by individuals; and whilst courts could do much, they can not do all. This state association has the power to do much if it will exert it, but if the association meets once a year and denounces and deplores, and then its members go back to their courts and clients and forget it all, what's the good?

The bar can give efficiency to the present statute by giving a strong moral support to the court that insists upon a showing of legal knowledge by every applicant for admission to the bar. If the applicant has any manly self-respect, he will not wish to be admitted on terms that advertise his unfitness. This has been tested in at least one county, where every applicant's case is referred to an examining committee, and in no case has a candidate reported against by the committee attempted to insist upon his supposed constitutional rights, and many unfit persons have been rejected

and thus kept out of the profession, in which they could only have been a pest and nuisance.

There is now submitted to the people an amendment to the constitution which, if adopted, would correct the present condition, providing that "the general assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all courts of justice." But the adoption of the amendment is very improbable. The case of the State v. Swift, 69 Ind. 505, makes the adoption of any amendment to the constitution well-nigh hopeless, unless the amendment be one that touches and arouses the universal interest of the electors. It is very unlikely that either of the amendments now pending will receive attention or interest sufficient to secure a favorable vote from a majority of all the electors of the state. The average elector will say that the first amendment is intended to secure more offices for lawyers and create more taxes for the poor taxpayer to pay, and he will either vote against it or not vote at all; and as to the second, he will reason that the lawyers are trying to make of their profession a sort of close corporation, and that it is an effort of those in to keep all others out, to the end that the business may be more profitable to those already in, and he will probably say, let every one practice law that wants to. And there are not wanting members of the profession who say, "What do I care who is admitted? I can take care of myself and get all the business I want." This wholly selfish view will no doubt prevent the full strength of the bar from being exerted favorably to the amendment. If, in view of all these seemingly insurmountable obstacles, this association desires the adoption of the amendment, it is absolutely necessary that it resolve now to press the amendments upon the attention of the electors and remove objections and prejudices, and every honorable means should be used to obtain a majority of all the electors for the amendments.

It has been suggested that a special election would have been more certain, but that is very doubtful. Special elections for any

purpose rarely call out a "full vote." And since the supreme court says that it knows the number of electors in the state, a majority cast for the amendment would not be sufficient unless it was also a majority of all the electors.

Your committee feels that this subject is of vital importance, less to the profession than to the public, and it should have energetic action. We believe, if this association will deal with the subject vigorously, and endeavor to enlist the active support of bench and bar throughout the state, the much-desired end may be reached, but with lukewarm, indifferent and careless treatment, the amendments are lost.

Your committee therefore recommends the passage of the following resolutions:

1. *Resolved*, That it is the opinion of this association that before students begin the study of law they should have a general education at least equivalent to a high school course, and that persons who have not such preliminary education should not be admitted into law schools as candidates for a degree.

This association recommends:

2. That each and every court in this state shall hereafter require all applicants for admission to the bar to pass an examination in law to the satisfaction of a committee appointed by the court to hold such examination.

3. That since the legislature of this state will meet soon after the vote is taken upon the question of amending the constitution in reference to admission to the bar, the president of this association appoint three members to draft a suitable bill upon this subject, which shall be presented to the legislature for passage, provided the vote on such amendment is favorable thereto.

THE PRESIDENT: Gentlemen, you have heard the report. What is your pleasure?

On motion, the report was unanimously adopted.

THE PRESIDENT: The next in order is the report of the committee on publication.

MR. ALBERT RABB: Mr. President, the committee on publications makes the following report:

INDIANAPOLIS, July 10, 1900.

To the State Bar Association of Indiana:

Your committee on publications makes the following report:

1. The proceedings of the last annual meeting of the association have been printed and distributed to the members of the association.

2. The report of the executive committee at such last annual meeting, as appears from such printed proceedings at page 196, contained a recommendation that this committee on publications be instructed to take such steps as may be necessary to secure the ratification of the proposed amendments to our state constitution at the coming general election.

The first proposed amendment is: To amend section two (2) of article seven (7) so as to read as follows:

"The supreme court shall consist of not less than five (5) nor more than eleven (11) judges, a majority of whom shall form a quorum, and they shall hold their offices for six years, if they so long behave well. Any vacancy caused by death or resignation shall be filled by the governor, as is now provided by the constitution; but any increase in the number of judges shall not be filled by appointment, but by election at the next general election after any increase is ordered."

The second proposed amendment is: To amend section twenty-one (21) of article seven (7) so as to read as follows:

"The general assembly shall by law prescribe what qualifications shall be necessary for admission to practice law in all courts of justice."

The above is the order which will be given the amendments on the separate ballots.

3. Your committee reports that, so far, nothing has been done in regard to the above matter, except as the attention of members of the association may have been called to the pending amendments by the printing and distribution of the proceedings of the last annual meeting.

4. Your committee respectfully recommends that the work be divided as follows:

(*a*) That a special committee be appointed and directed to take proper steps to have the state and county committees of the different political parties give such instructions to the election officers as will insure each voter to receive the printed ballot on the amendments, and the tabulating, counting and certifying of the vote.

(*b*) That either a special committee be appointed and directed, or a proper standing committee be directed to take proper steps to call the attention of the voters to the proposed amendments through the press of the state and through the members of the bar throughout the state. Organized effort in this direction will require considerable correspondence. We recommend that such of the actual and necessary expenses of the committee in the matter of correspondence, such as postage, printing, typewriting, etc., as may be approved or authorized by the executive committee, be paid out of the funds of the association.

Respectfully submitted,

ALBERT RABB,
CHARLES F. REMY,
CHARLES G. RENNER,
THEODORE P. DAVIS,
For the Committee.

THE PRESIDENT: Gentlemen, you have heard the report. What is your pleasure?

MR. E. P. HAMMOND: I move that the report be adopted.

The motion prevailed, and the report was adopted as read.

MR. FRANK P. FOSTER: Concerning the report just read from the committee on legal education, I would like to move that the secretary of this association be instructed to have printed a number of copies of the second resolution recommended to be passed, and send copies of that resolution to all the courts in the state. The reason I make this motion is, I think it is important in the first place that this question of preparation for admission to the bar be discussed. I don't know in how many counties examinations are held for admission to the bar. I know in our own county no examinations were held until within the last year. They are now being held. I believe, as the report stated, that if examinations were held or required by the judges of the different courts, it would be a splendid thing, and tend to at once raise the standard of admission to the bar.

THE PRESIDENT: It is moved and seconded that the second in order of the resolutions reported by the committee on legal education be printed in suitable form by the secretary and distributed to all the judges in the state. Those in favor of the motion say "aye;" those opposed say "no."

The motion was carried.

THE PRESIDENT: Perhaps, gentlemen, before we pass upon the report of the committee on publications, I should call your attention to the fact that, as I understand it, the report as adopted by the association leaves one matter undetermined. It recommends that either a special committee be appointed or the proper standing committee be directed to take the action suggested. The recommendation is in the alternative. Am I right, Mr. Rabb?

MR. RABB: Yes, sir. The committee recommends "that either a special committee be appointed and directed, or a proper standing

committee be directed to take proper steps to call the attention of the voters to the proposed amendments through the press of the state and through the members of the bar throughout the state," for the purpose of explaining and getting this matter before the people.

THE PRESIDENT: You recommend that the work be divided.

MR. RABB: Yes; the first part is that "a special committee be appointed and directed to take proper steps to have the state and county committees of the different political parties give such instructions to the election officers as will insure each voter to receive the printed ballot on the amendment, and the tabulating, counting and certifying of the vote."

THE PRESIDENT: That the association has adopted. It has directed the appointment of a special committee for the performance of that duty. Now, for the other, your report does not distinctly recommend whether the work be done by a special committee or a standing committee. Will the association now complete that business by taking some action which will settle that question? Shall that be referred to a standing committee or to a special committee? I think it desirable that that matter be acted upon.

MR. WILLIAMS: I would like to inquire of Mr. Rabb if his recommendation called for a special committee of three? Did you name any number?

MR. RABB: No, the committee did not name any number, but it probably ought to be a committee of four.

MR. WILLIAMS: I move that the special committee called for by that report be four in number, and to that committee be committed all the recommendations of that report, instead of referring part of them to any permanent committee of the association.

THE PRESIDENT: That motion, then, gentlemen, will somewhat modify the action that is to be taken. The motion now is that the special committee provided for in that report, whose duty it shall be to communicate with the various political committees in the state

and procure those committees to take such action as will secure to the voters intelligent action upon the constitutional amendment, that that committee shall consist of four, and shall be a special committee; and it further provides that to that same committee shall be committed all the work contemplated in that report. That, gentlemen, will involve a little modification of the report, but I think the association understands it. Are you ready for the question?

MR. THEODORE P. DAVIS: It occurs to me that the motion of Mr. Williams should prevail, and that all the work contemplated by the report should be performed by the special committee. Of course, the committee can not only communicate with the different political committees, but it can also take the steps contemplated in that report for the purpose of communicating with the voters. I think it would be better than to have two separate committees, as was contemplated by the report. I believe the suggestion of Mr. Williams is a good one, and ought to prevail.

The motion was adopted.

THE PRESIDENT: That committee will be announced at some time during the session. The next business in order is a report from the committee on grievances.

MR. S. A. HAYS: Mr. President, I take it that it speaks very highly for the character and standing of the members of this association for the committee on grievances to be able to report that no complaint of any grievance has been filed with the committee. Therefore, I report that no business has come before the committee, and we therefore have no report to make.

The secretary read the report of the committee on admission of members, as follows:

REPORT OF COMMITTEE ON MEMBERSHIP

INDIANAPOLIS, IND., July 10, 1900.

To the State Bar Association of Indiana:

The undersigned committee on admission of members respectfully reports that they have carefully examined the applications for membership in this association of

Samuel R. Artman, Lebanon.
George H. Batchelor, Indianapolis.
Lee Fenton Bays, Sullivan.
Francis Marion Griffith, Vevay.
Cassius C. Hadley, Indianapolis.
Lucian Harris, Vevay.
Richard A. Jackson, Richmond.
Fleura F. James, Newport.
Ralph K. Kane, Noblesville.
George H. Koons, Muncie.
Ulysses S. Lesh, Huntington.
Clark J. Lutz, Decatur.
Frederick E. Matson, Indianapolis.
Henry C. Morgan, Huntington.
Samuel L. Morris, Fort Wayne.
John F. Neal, Noblesville.
John O. Piety, Terre Haute.
George S. Pleasants, Vevay.
Robert H. Proctor, Tipton.
Edward D. Reardon, Anderson.
Jesse S. Reeves, Richmond.
Lemuel W. Royse, Warsaw.

William H. Shambaugh, Fort Wayne.
Harry C. Starr, Richmond.
Daniel E. Storms, Lafayette.
Carroll S. Tandy, Vevay.
Joel E. Williamson, Evansville.
Alphonso C. Wood, Angola.
Evans Woollen, Indianapolis.
Charles McCormack Zion, Lebanon.

We find that said persons are honorable and worthy members of the bar of this state, and we respectfully recommend that they be admitted as members therein.

Respectfully submitted,

E. P. HAMMOND,

Chairman of Committee on Admission of Members.

MR. JOHN B. COCKRUM: I move that the report of the committee be concurred in and the members named be declared elected.

A MEMBER: Should not the election be by ballot?

THE SECRETARY: The by-laws provide for a ballot on the demand of any member. The resolution is all right in the absence of a demand for a vote on any name.

THE PRESIDENT: Gentlemen, it is moved and seconded that the members of the bar whose names have been read in your hearing be admitted as members of the association. Those in favor of that motion will say "aye;" those opposed "no." The members named are admitted unanimously as members of the association.

That completes the call of the committees, gentlemen. But before we adjourn, I think it would be well to call your attention to the situation in which we left the business reported by the committee on jurisprudence and law reform. In taking action upon the bill which was read to you by Mr. Miller, you expressed your approval of the first and third sections and your disapproval of the second and fourth. But you gave no direction as to what should be

done with them. Now, if you want this bisected bill presented to the legislature, I think it would be necessary to take some further action. If you do not take any further action, I do not see that any duty will devolve upon the committee. I simply state that for your information.

A MEMBER: I move that the matter be again referred to the committee for its action.

MR. KETCHAM: As a substitute for that, Mr. Chairman, I move that the committee be directed to present the bill to the proper committee of the next ensuing general assembly, with a recommendation on behalf of the bar association of the state of Indiana that it be embodied into law.

THE PRESIDENT: That is, the bill as amended?

MR. KETCHAM: Yes, the bill as favored by the association.

THE PRESIDENT: The association has by vote expressed its approval of the bill which shall forbid, under penalty, the levying of political assessments upon candidates for judicial offices, but it does not approve the forbidding of voluntary contributions by candidates for such purposes. The motion now is that the committee be directed to present a bill as thus approved. I take it we may assume that the committee will be authorized to make such formal or verbal changes in the bill as may be necessary, but that they shall present the bill as approved by the association to the proper committee of the next general assembly. Those in favor of that motion will say "aye;" those opposed "no." The motion prevails.

MR. J. E. MCCULLOUGH: I desire to make a motion in regard to a matter that has passed. It occurs to me, as has already been suggested, that the question of getting enough votes at the next election to carry these pending constitutional amendments is one of a great deal of importance. I think there was much force in what was said in the report of the committee that arguments may be made against the amendment on the ground that it increases the number of offices, the number of judges, and therefore the ex-

pense in the way of taxes would be largely increased, and that it is favored by lawyers for that reason. If that amendment should be adopted, as I remember it, it limits the full number of supreme judges to eleven. It would become the duty of the ensuing legislature to prescribe by law the number that shall be elected at the ensuing general election two years from now. It is not a matter that I have given much thought to, as to whether the whole number of eleven would be necessary at this time, or whether they will not be necessary. It was suggested by others, whose judgment is certainly good, with reference to the matter, that the whole number of eleven would not be necessary; that the legislature, in justice to the bench and to the state, ought not, at the ensuing election, elect or provide for the creation of eleven supreme judges. While the constitutional amendment extending the limit to that number is wise at this time, its provisions should be deemed to be intended for the future to some extent. While, of course, we can not, in this association, take out of the hands of the members of the legislature the question as to what the number will be, the suggestion I have to make is this: that if nine would be deemed sufficient—an increase of four—if it was the sense of this association that an increase of four would be sufficient, then the committee which has been provided for or appointed to co-operate with the political committees in bringing about the passage of the amendment should be armed with authority from the bar association to express as its opinion and its judgment that nine would be sufficient and eleven would not be required; then, as a practical proposition, it would aid us very much in securing the passage of those amendments. The argument could easily be made that nine supreme judges of the state would be no increase of expense over the present plan of judges of the appellate court. In other words, that while we have ten now, it would operate in point of fact to decrease the number by one and operate to increase the salaries to the same extent as those now paid. In other words, the simple proposition is this:

If the association is ready to express as its opinion that an increase to nine would be sufficient and recommend that the legislature discharge its duty by providing for the election of nine, if that is the sense of this association and that sense is known all over the state, in my judgment it would increase very materially the chances of carrying these amendments at the ensuing election. I want to submit that to the association, and for the purpose of getting it before the association I move, Mr. Chairman, that it is the sense of the bar association that nine judges would be a sufficient number—an increase of four over the present—for the legislature to provide for at the ensuing session of the general assembly in the event the constitutional amendment providing for a greater number should carry at the polls.

MR. BURKE: As to the policy of that, I would like to see that constitutional amendment adopted, and I would not like to go out in the campaign now with the recommendation of the bar association that we should have nine instead of eleven judges. I think that members of the bar and members of the bar association can probably be elected to the legislature. Occasionally this association breaks into the legislature, and I think it can be trusted, with the lawyers of the state and the circuit judges, in connection with the legislature, to settle that question when the time comes to settle it. The aim now is to get the amendment through first, and there are some people who pay taxes and scrutinize public accounts and figure on the salaries of judges who do not figure on the salaries of anybody else, and they are likely, Mr. President, to take a stand against it if we say that we can get along with nine at this session of the legislature, to be supplemented by two more at the next. I don't think we ought to take any such action as that.

MR. WILLIAMS: I hardly think it would accomplish the purpose suggested by fixing upon nine as a positive number. I think the purpose would be better accomplished if we were to say not exceeding nine; then they could make it seven.

THE PRESIDENT: Do you move to amend?

MR. WILLIAMS: I do.

MR. MCCULLOUGH: I accept that amendment; that the sense of the association be expressed to the effect that the number of supreme judges to be provided for by the next general assembly should not exceed nine.

MR. FRANK P. FOSTER: Mr. Chairman, I want to say a word. It strikes me as impolitic to talk about going before the electors of the state with a proposition that we should have only nine members elected by the next legislature, and at the same time presenting to them an amendment which provides for eleven. The first thing that comes to the mind of any one who thinks about it, and that would surely be the case with the man who was figuring on the salaries of judges, would be this: "If you only want nine, I will vote against this amendment. If you only need nine, why vote for an amendment which contemplates eleven eventually?" Besides that, I think we would stand better by simply going before the electors and saying that we need eleven judges on the supreme bench, and we have provided an amendment for eleven, and the reason why we ask you to vote for this amendment is because we need eleven. Besides that being the honest way and the fair way, it is the fact, Mr. President—the truth is that we have ten judges now. It is contemplated, as I understand it, that when we shall have passed this amendment and provided for the necessary increased number to eleven members of the supreme bench, the appellate court will fall out. Now, then, if that court is to be eliminated, then we will need this entire number, and at once, and we can go before the electors, if you please, Mr. President, and say that we need eleven because experience has demonstrated to us that ten, which we now have, are not enough. We are simply transposing the character of the bench of the highest courts of the state from two courts to one court, and that is all there is in it, and that explanation will be very much simpler to the ordinary mind

than the explanation suggested by the pending motion. I believe that we ought to go before the people standing upon a resolution that the court should consist of eleven judges. That is what the amendment is for; that is what we mean, and if this appeal is made earnestly and presented to the business people in every community, we can aid very much in the passage of the amendment.

MR. THEODORE P. DAVIS: Mr. President, I am very anxious that this amendment should be adopted at the ensuing election, and I am opposed to adopting a resolution by this bar association that in our judgment nine, or not exceeding nine, will be sufficient, because I am conscientious in the statement, in the light of my knowledge and experience on the subject, that we will need the entire number, so far as that is concerned. If the appellate court is to be abolished, with the increased business there is in this state, with the condition of the dockets as they are at this time, I would not want to go before the people upon any statement that we could get along with any less number. We will need the entire number, so far as that is concerned, but it should be left to the legislature when the time comes to provide for the number of additional judges that may be needed. At any rate, I would not want to go before the people and say that in my opinion I believed that nine judges might do the business, because I do not believe it.

MR. BURKE: Don't you think the adoption of a resolution as to the number needed under authority of the constitutional amendment, without any guarantee of reducing the present number of judges, would endanger the passage of the amendment? We have ten now. There is nothing in this constitutional amendment that provides for the abolition of the appellate court, and the ordinary fellow would say: "You have enough judges now."

MR. DAVIS: That would be my judgment. I should not say anything. I would not adopt any resolution on the subject. I desire to add or to call the attention of the members to the fact that the amendment provides: "That the supreme court shall consist

of not less than five nor more than eleven judges." It seems to me that this motion here is simply one of policy. It is for the purpose of getting, if possible, the people to vote for this amendment. I don't believe the people are likely to vote for the amendment if we go before the people with a resolution that in our judgment we only need nine. As a matter of policy, it seems to me it is very much better to say nothing on this subject than to say we want you to vote for more than we need because some time in the future we will need a greater number, because, it seems to me, the voter who thinks upon this subject at all will say, if you want only nine and have provided for eleven and I am asked to vote for eleven, I shall vote against this amendment. As a matter of policy, it seems to me this motion ought not to carry, and I understand it is presented by the gentleman as a mere matter of policy, for the purpose of getting the best results from the voters of the state.

MR. MCCULLOUGH: Mr. Chairman, I don't want to be understood as making the suggestion for any purpose of clap-trap. I am very much inclined to think that if it was the judgment of the gentlemen who introduced these resolutions that with the present population and amount of property in Indiana eleven supreme judges were now necessary, there was a gross oversight on the part of these gentlemen. The constitution of 1851 limited the number to five judges. It had stood for a good while at three judges, and afterwards, as I remember, at four judges, and afterwards five. Now we are proposing to go through all the work of securing a constitutional amendment providing for eleven judges, which is no more than necessary at this time for the needs of this great and growing state. I say we will have made poor preparation for the future in this constitutional amendment, because, before the growing demands of the state can be met, we must again amend the constitution. It was upon the idea that not only the present but the future was to be provided for, or contemplated to be provided for, when the proposed amendments were introduced that eleven judges were

supposed to be necessary, not at this time, but some time in the future. If this were so, and the people of this state understood that it was so, and understood through the bar association of the state, which would be presumed to know or have a better judgment upon that subject than any other body, that we were not going to provide for the extreme limit of the number of supreme judges at once, but were going to ask the legislature to make it a less number, then if that was the fact, the voters ought to know it, and that fact would be very beneficial to us in securing the requisite number of votes for these constitutional amendments. Of course, if it is the judgment of the association that as soon as these constitutional amendments are adopted we should have at once eleven judges for present purposes, then it ought not to express its opinion that a less number would be sufficient.

MR. JOHN W. KERN: It occurs to me that the practical question in which we as members of the bar association are interested is, How can the votes be had to adopt these constitutional amendments? It was suggested in the report of the committee on publications that there might be a misapprehension in the minds of the voters as to the number of judges that would be required. The argument would be made that it would multiply offices, and that voters would perhaps be against the amendment for that reason. To meet that suggestion of the committee, my friend, Mr. McCullough, offered a resolution to express the sentiment of the association that a bench composed of nine members would be sufficient, or not more than nine. Now then, that is the status of the question at this time. I venture to suggest, sir, that if the voters of Indiana should by any means find out in this presidential year what this association desired—which is doubtful as to whether they will find it out or not—the suggestion or recommendation of the association would have very little weight with the average voter. Now, it seems to me that the practical way of getting at a solution of this question as to how we can get votes would be some-

thing like this. As I have already suggested, this is a presidential year; all the parties have effective machinery; to get directly at the root of the matter, I would say that the committee of this association should undertake to cultivate relations with the committees of all the parties in Indiana; to enlist with them in their efforts every member of every state central committee, and through them the members of the various local committees. Then, you are getting toward a practical solution of the question as to how to get votes. I venture to suggest that if you would appoint a committee to enlist the efforts of the various committees, state and county, in this state, that committee would then have abundant success in its efforts in that direction. I believe, sir, that if the proper effort is made, you may enlist the efforts of the committees of all the political parties in Indiana, and when you have done that you have done a great deal more towards procuring the adoption of these amendments than you have by passing any number of resolutions here on this occasion. I am not sure but that my friend, Mr. Burke, is right in his suggestion that the adoption of a resolution calling attention to nine would do more harm than good. I am not impressed that any resolution would do either harm or good, but I think the sensible way to get at this thing is the way I have suggested, to enlist the efforts of the committees of the different political parties; they are the men who do business in Indiana; and through them you will have no difficulty in securing the adoption of these amendments, because it is to these men that the voters listen at the supreme moment just before the election.

MR. COCKRUM: I think the members of the association and the bar generally would be glad to have the constitutional amendment passed and the number of judges increased to the limit of eleven. I am heartily in sympathy with the suggestion made by my friend Burke that to call attention to the fact that a less number might answer present purposes would result in the defeat of the amend-

ment. I therefore move, sir, that the motion of Mr. McCullough be laid upon the table.

The motion to lay the resolution upon the table was adopted.

THE PRESIDENT: The next business in order is the report of the committee on obituaries.

THE SECRETARY: The committee have to report that during the past year the following members have died: John H. Bradley, Charles A. Korbly, Edwin P. Hammond, Jr., John Franklin McKee, Jacob J. Todd.

The secretary then read the following sketches, which were ordered spread upon the minutes of the association:

In Memoriam

JOHN H. BRADLEY.

PREPARED BY MORTIMER NYE.

John H. Bradley was born at LaPorte, Indiana, on the 24th day of December, 1851, and died at LaPorte, February 16, 1900, of typho-pneumonia, after a brief illness of four days. He was stricken with the disease of which he died while in the discharge of his professional duties in the LaPorte superior court, and thus fulfilled one of his dearest wishes—that he might be active to the end of his life. The deceased was the son of Judge James Bradley, who was one of the pioneer lawyers and jurists of this state, and whose memory is cherished and honored by all who knew him.

John H. Bradley was born in LaPorte. He lived his whole life in our city, and died at his residence on the same plot of ground upon which he was born. He was educated in the LaPorte public schools and at Earlham College, Richmond, Indiana, and afterwards attended law school at Bloomington, Indiana, and was a law student in his father's office up to the time of his admission to the bar. He then formed a partnership with his father, and for years, and until the death of his father, they conducted a large and lucrative law business in this part of the state.

From the date of his father's death John H. Bradley continued to practice law without forming any copartnership with anyone. In his early practice he held some minor offices—city clerk, deputy prosecuting attorney, and was both city and county attorney—all of which positions he filled with credit and distinction to himself

and to the entire satisfaction of the public. He was never an office-seeker. His sole aim in life was to become a respected lawyer and a good citizen.

In October, 1878, he was united in marriage with Miss Myra B. Teegarden, who was a daughter of Dr. A. Teegarden, who was also one of our most honored and worthy pioneer citizens. The deceased leaves surviving him his widow and two children, a son and a daughter, to whom he has left the most precious of all legacies—the remembrance of a well-spent life and an honored name.

John H. Bradley has built his own monument, and has builded well. His position was conspicuously prominent at that place where Webster once said, "there was plenty of room." He had the highest regard for the ethics of the profession, and never on any account departed the least therefrom. By his quick perception and studious life he was always able to come into a case well equipped for any emergency, and by his clear and wise expressions he was always able to be understood, and in practice met with such success as always attaches to an honest and earnest advocate. In the trial of a case he was always fair and honorable, and never resorted to any low cunning or trickery to gain any undue advantage over his adversary. He always sought to present law and the facts in such a manner as his judgment told him was right, and would abandon a case in which he had been employed rather than consent to fraud or trickery by others on his side of the case.

He was never elected judge, and yet for years he has served in that capacity in special cases, both in this and surrounding counties, and that service was so pure and so eminent that he was uniformly thought of and spoken of as judge. His mind was judicial. His bearing commanded admiration and respect; his rulings were clear and impartial, and, best of all inspirations for a judge, he inspired the lawyers who practiced before him with the firm belief that his every ruling was honest and made with the sole pur-

pose of arriving at the truth within the limits of the law as he understood it to exist.

His life was pure and genial; always dignified and courteous, honest, truthful and intelligent—a faithful and constant friend, a high-minded and dignified citizen.

In the death of John H. Bradley the state loses one of her most excellent and exemplary citizens, his family a devoted husband and loving father, the bar one of its brightest and most honored members.

April 18, 1900.

EDWIN P. HAMMOND, JR.

PREPARED BY WILLIAM V. STUART.

On last Christmas afternoon the inhabitants of the city of Lafayette were shocked to learn of the death of Edwin P. Hammond, Jr., a member of the bar of Tippecanoe county, and of this association, he losing his life while attempting to board a Monon passenger train at Roachdale, Indiana.

Edwin P. Hammond, Jr., was the third child and only son of Judge Edwin P. Hammond and Mary A. Spitler, and was born at Rensselaer, Indiana, March 2, 1873.

After completing his studies in the schools of that city and attending Notre Dame College for a year, he entered Indiana University, graduating with honor in 1895 with the degree of A. B. Having chosen the profession of law for his life work, he read under the guidance of his father until the opening of the school year following, when he matriculated in the law school at his alma mater, graduating therefrom in 1897. At this time he entered the office of his father, the Hon. Edwin P. Hammond, a member of the firm of Stuart Brothers & Hammond, later Stuart, Hammond &

Simms, where he continued in the active practice of his profession until his death.

He was an excellent student and an exceedingly bright, active and quick young man. The prospects before him were of the rosiest character. He had in him the making of a fine lawyer, and it was his father's greatest hope that he might become a leader in that profession. They were inseparable friends, as well as father and son, and the younger man accompanied the elder on all his legal trips to other cities. He was ambitious and a tireless student. At college he was very popular; at his former home (Rensselaer) he was idolized; in the city of Lafayette he had friends in all walks of life.

The Tippecanoe Bar Association adopted the following very fitting and touching memorial, prepared by D. W. Simms, who was associated with him in the practice of law:

"Once again has death's unerring shaft found lodgment in the heart of a member of this bar. While Christmas bells were ringing, and all earth seemed filled with glad anthems of the happy holiday season, the summons came to Edwin P. Hammond, Jr., and, without pausing to reply, he took his departure and entered upon the solution of that greatest problem of life—death.

"We meet in the forum to-day to pay tribute to his memory, and to express sincere and heartfelt sympathy for those whose lives, by nature's ties and association, were so closely intertwined and interwoven with his that it seemed when his sun had set theirs could no longer shine. * * *

"Edwin P. Hammond, Jr., was, both by nature and education, most excellently equipped to succeed in the profession to which he had become wedded.

"His eminent qualities of heart and mind were recognized by all who knew him.

"His opportunities to become a leading jurist were unexcelled, if not unequalled. His every effort was made beneath the eye of a

fond father, whose own experience and ability have made him the peer of the ablest jurists of the day.

"The death of Edwin P. Hammond, Jr., has robbed this bar of one of its most promising members. It has removed one whose courtesy and kindly greetings had endeared him to his fellow-members. It has taken from the father and the mother the solace and comfort of their riper years.

"We bow in sorrow to the mandate of Him whose 'ways are past finding out.'

"So far as human sympathy can extend, we offer ours to the bereaved and stricken family. Therefore, be it

"*Resolved,* That this memorial be spread upon the records of this court, and a copy thereof transmitted to the family of the deceased."

CHARLES A. KORBLY.

PREPARED BY CHARLES MARTINDALE.

Charles A. Korbly was born at Louisville, Kentucky, January 16, 1842, and died at Indianapolis, Indiana, June 13, 1900. His parents were from Alsace. About four years after his birth they removed to Ripley county, Indiana, where he was reared, obtaining his primary education in the country school, in which he afterwards taught.

He was early in life attracted to the study of medicine, and served three years as assistant surgeon in the army during the civil war. After retiring from army service he located first at Michigan City, Indiana, where he began to read law, and soon afterwards removed to Madison, where he continued the study of law and became a partner in the practice of that profession with Hon. Henry W. Harrington.

He soon took a high place in the bar of southern Indiana. He

married at Madison Miss Mary Bright, daughter of the late Michael G. Bright, who, with two sons and a daughter, survives him.

In 1895 Mr. Korbly removed to Indianapolis and associated himself with Hon. A. G. Smith, this partnership lasting until his death. Here his ability was quickly appreciated, and he was accorded a rank among the leaders of the bar of the state. In politics Mr. Korbly was a democrat, and adhered to the original principles and traditions of his party. In religion he was a Roman Catholic of the Ultramontane party, but never controversial or intolerant. He was a man of the most liberal culture, of high and serious purpose, of strictest integrity, and of a sensitive moral nature.

Mr. Korbly was a scholar of attainments far beyond the ordinary. He possessed unusual power of mental effort and concentration. He was well read in both German and English literature and in the natural sciences. As an advocate he was never oratorical, but possessed a remarkable power of clear statement and convincing logic. As a counsellor he was exact and careful, carrying his researches into the remotest sources of the law and into every detail. As a lawyer he was not only learned; he was profound. Mr. Korbly was always a powerful ally and a courteous opponent. No one could associate with him without feeling an inspiration to earnest effort, to nobler aims.

What Whittier said of Pennsylvania's great thinker, Elisha Mulford, can be truly said of him:

"Unnoted as the setting of a star
He passed: and sect and party scarcely knew
When from their midst a sage and seer withdrew
To fitter audience, where the great dead are
In God's republic of the heart and mind,
Leaving no purer, nobler soul behind."

JOHN FRANKLIN McKEE.

PREPARED BY EDGAR O'HAIR.

John Franklin McKee was born March 24, 1841. His early life was spent on a farm. In 1862 he enlisted in the army, and three of the best years of his life were given to his country. He chose the law as his profession, and after completing his studies he located in Brookville in 1867. Here he lived continuously until 1894, when he moved to Indianapolis.

His upright life in the community is well known. His means were distributed with open hands. He loved his church, and to her he gave freely and gladly. Sabbath-school work and the children found there were his especial delight, and no amount of labor or time thus bestowed was counted wasted. A good man has gone to his reward, and there is a vacancy in the little home that can not be filled, where he and his loved companion, now so sadly bereaved, dwelt in unison and oneness of purpose to serve the blessed Master, whom they so unfalteringly trusted.

After being honorably discharged from the army that battled for the preservation of the union, he prepared himself for his chosen profession, and then from 1867 to 1894, a period of twenty-seven years, was a conspicuous and successful member of the Franklin county bar. He was capable, painstaking and conscientious in the discharge of his duties as an attorney, and scorned to resort to any low trickery or unfair practice to gain an advantage over an adversary. During many of those years of his professional career his firm had a liberal share of the important and desirable business in this locality, and its requirements often necessitated great and constant labor and care. While this was true, he was a broad-minded citizen, ever ready to aid and bear his full share of labor and expense in promoting all enterprises for the betterment of the town and community. He was generous to a fault, and, however busy, he could find time

to give to the needed committee work of the many moral, charitable and social movements that from time to time required intelligent and gratuitous management and care. Somebody must do these things or they are sadly neglected. Not in one line only did his benefactions extend, but in his church, the Sunday-school of which he was superintendent eight years, the fraternal society to which he belonged, the Grand Army post, the business men's organization for improvement—all received contributions of time and means from him. Besides these, he gave personal attention and assistance to the very poor, both in and out of the asylum. The orphans' home and the dependent little ones there were the objects of his tenderest care and solicitude. No record accessible to the human eye can be found where are enumerated the number of poor families which were assisted by him in times of poverty and sickness or death, or of the orphans or aged poor who were furnished a warm coat for winter or books needed for their school work.

But all these things are known to Him who said, "Inasmuch as ye did it unto the least of these, my brethren, ye did it unto me."

JACOB JEFFERSON TODD.

PREPARED BY JOSEPH S. DAILEY.

Jacob Jefferson Todd was born in Beaver county, Pennsylvania, March 12, 1843; was the son of Jacob Todd, a farmer, who moved to Wells county, Indiana, in 1851. He was reared on his father's farm, and received his education in the common schools of his adopted county, and later at Roanoke Seminary and Fort Wayne College. In 1864 he enlisted in the 137th Indiana Infantry, and was stationed at Tullahoma and Duck River Bridge, under command of General Milroy, who was in charge of the railroad de-

fenses. In the winters from 1861 to 1865 he taught in the public schools of Wells county. In the summer of 1865 he began the study of law at Bluffton, was admitted to the bar in May, 1866, and at once entered upon the practice of the profession, in which he continued until his death on May 13, 1900. Owing to his infirm health he did not enter extensively into the trial of causes, but had a broad and comprehensive knowledge of commercial and probate law; was a splendid office lawyer and collector, and from the very start enjoyed a large and lucrative business. During almost his entire practice he was the attorney for the Exchange Bank of John Studabaker & Co., which is now known as the Studabaker Bank. He was an industrious, studious, public-spirited man of refinement and great moral worth. He had the highest regard for professional ethics, and his social qualities were unexcelled. He enjoyed the confidence and esteem of his neighbors to a degree unsurpassed by any other person. He led an exemplary Christian life; was during his entire residence in Bluffton a member in good standing of the M. E. Church; one of the trustees, and at different times its Sunday-school superintendent. He was a lay delegate to the general conference at Philadelphia, Pennsylvania, in May, 1884.

He devoted a portion of his time to vindicating the principles of his party, and when so engaged was an earnest and tireless worker in the cause. In June, 1880, Mr. Todd was a delegate to the national republican convention at Chicago that nominated Garfield and Arthur. In 1894 he was the candidate of his party for circuit judge, and came within fifty-six votes of an election in a district where the normal democratic majority was more than 1,200.

In 1896 he sought the nomination for governor in the convention which nominated Governor Mount.

Mr. Todd was worshipful master of Bluffton Lodge No. 145, F. & A. M., during the years 1872, 1877, 1878 and 1879, and was

subsequently grand master of the grand lodge of Masons for Indiana.

He was a kind and devoted husband and father and an excellent citizen. In his death the Wells county bar has sustained an irreparable loss.

THE PRESIDENT: I will appoint as members of the auditing committee to pass upon the report of the treasurer, in accordance with the resolution passed by the association, Mr. John G. Williams and Mr. Frank E. Gavin.

Upon motion, the meeting adjourned to to-morrow morning at 10 o'clock.

MORNING SESSION.

WEDNESDAY, July 11, 1900.

The association was called to order by the president, and the following papers were read:

THE LEGAL RIGHT OF THE NEXT GENERATION.

PAPER BY FRANK S. ROBY.

Not long ago a young man was arraigned in one of the northern counties, charged with assault and battery, with intent to commit rape, upon a woman seventy-four years of age, quite infirm, and extremely unprepossessing in appearance. He was told before leaving the jail, by some of his fellow-prisoners, that he "would have to marry the old woman," and at once expressed a willingness to do so, although he said that he did not think he would like to live with her very well. He did not seem to be a violent or particularly dangerous man, but was manifestly without any inherent integrity. Susceptible to environment in an unusual degree, confinement in the penitentiary and contact with habitual criminals would make an habitual criminal of him. Able to work and earn enough money to live upon, it would still be impossible for him ever to become a desirable citizen. He was the son of parents who possessed sufficient intelligence, with the aid of the township trustee, to keep out of the poor house, and the oldest of six children.

Section 18 of the bill of rights provides that the penal code shall be founded on the principles of reformation, and not of vindictive justice.

The right of society to inflict punishment for crime depends upon the right of self-defense. In the absence of the provision quoted, it would still have no right to punish other than with a view to the reformation of the offender.

The illustration is designed to show the difficulty of applying the principle. Reformation implies the existence of a subject capable of being reformed.

The criminal law takes cognizance only of acts committed. Its penalties are declared upon the theory that all men are equally responsible for and equally able to refrain from crime. The personality of the offender is not taken into account.

Prior to the enactment of the indeterminate sentence law, the courts could only speculate as to the results of the maximum, minimum or intermediate terms of imprisonment provided for by the statute. Since that wise and wholesome measure, the prison board is able to moderate punishment with some regard to the developing condition of the convict.

The result of the law, well administered, is satisfactory from every standpoint. The board should at the first opportunity be made distinctly non-partisan, not on account of anything that has been or is likely to be done, but in order that the suspicion of political influence in connection with its work be impossible. Judges are not able, at present, to balance one miscarriage of justice by an extreme sentence in the next case. There is now no occasion for men upon the bench entering judgments one day and signing petitions for executive clemency the next.

The fact still remains, however, that the personality of the accused is not taken into account by the statutes defining crime. The discretion of the judge is therefore tested to the uttermost in his constant effort to guard against injustice and hardship in individual cases.

The rule of reasonable doubt and the presumption of innocence have been many times used to defeat the letter of the law, when guilt was only doubtful by reason of the harshness of the statutory penalty applied to such a man as the defendant happened to be, and in view of the circumstances surrounding him.

The conclusions of the American jury are never wrong when the truth is made plain. What has been called its "equity power" enables the jury to make the law endurable where its literal enforcement would shock the civilized conscience to such an extent as to

breed revolt and rebellion. But for the elasticity imparted by the humanity of those who administer them, many prescribed penalties would be unendurable.

It is not proposed in this paper to suggest that there should be different laws for different men. Judges viewing with compassion the weak, the blind, the ignorant and the unfortunate as they pass in ceaseless procession through the courts can be trusted in the main to temper justice with mercy, while as long as twelve jurors have power to decide both fact and law, guilty men may escape, but innocent ones will not be punished.

One effect as well as purpose in the punishment of crime is by example to deter others from the commission of similar offenses. The influence of fear thus inspired is an influence not to be underestimated in the maintenance of the public peace and safety.

The power of the state thus to protect itself and its citizens has not been doubted. Neither is the right of self-protection confined to the infliction of severe punishment. The power is as broad as the need. The right to punish crime and the right to prevent crime are inseparable. The progression of the law is in the direction of preventing crime. The only satisfactory disposition of the ignorant criminal is to improve him out of existence.

To educate and enlighten the community reduces the tendency to lawlessness, obedience to authority and conformance to custom being enjoined by both selfish and unselfish considerations.

Those things that contribute to the improved physical or mental condition of any member of the community tend to the security of the state, and to aid mankind in reaching those high levels of morality and intelligence from which the results of digression and wrong-doing can be seen in all hideous and hateful forms.

Ignorance is a comparative term, applicable in some degree to all. Determined by average standards, it gives moral quality to the acts and omissions of men.

The transgressor of the written law may be responsible, not a fit

subject for an insane asylum, and yet lack perception and be incapable of the mental activity necessary to enable him to remain a law-abiding and useful member of society.

For such a man there ought to be much pity and some of the human sympathy that makes itself manifest in tangible form; but pity and sympathy do not avail much, while harshness and severity avail nothing at all.

Is it any wonder, with such material to deal with as they have, that the courts sometimes make mistakes? That an ideal administration of justice has not been attained?

We pay much attention to the enactment of statutes defining crime and prescribing rules of conduct.

We pay much attention to the formation of courts, the selection of officers, and the fashioning of the machinery with which to enforce the statutes.

There is no danger that the statutes will ever be too carefully written or construed, or that the integrity and efficiency of the courts will be raised too high; but there will be less need of statute and less work for court when more attention is paid to the individual for whose benefit and restraint these things are.

The average character of the community depends upon the number of the wise and capable who belong to it, and also upon the number of its incapable and incompetent.

Whatever raises the average simplifies the problems of society and government. They are problems not confined to the criminal courts. They embrace the relations of the many to the few; of the many to each other. They include the distribution of wealth, the compensation of labor, and the wise direction of that gigantic and essential force inherent in combined effort and accumulated wealth. Ignorance and hatred complicate, but can not solve such problems.

Charitable institutions, schools and missions have a proper place of high accomplishment, but they alone can not make men capable

of apprehending and comprehending their full duty, their responsibility and their power.

Without marble at his hand, the art of the sculptor is vain. It is the crude good material quarried and cut from the earth that enables the builder to build.

No statesman, no warrior, no sage but had the germ of his future glory planted deep in his soul at birth.

No man ever spoke eloquent words of defiance or defense except as he had inherited latent power. The inheritance, of which no one can be deprived, is not always traceable, and it is not always one of pride or power.

Why are there six hundred unfortunate, distorted, broken images of humanity in the home for the feeble-minded? Is the fault theirs? Indeed, no. Are all the feeble-minded of the state within the walls of that beneficent institution? Only a part of them.

We are proud of the institution, but we are not proud of the facts that make it necessary; we shrink from them.

The laws of nature are simple and easily understood. They are known throughout the land. We raise thoroughbred horses and blooded kine. Our barnyard fowls are of noble birth, and the very dogs have pedigrees. What care do we give to the culture of men? Let me illustrate again.

Forty years ago there was born, as the fruit of incest between brother and sister, a male child. He grew to the stature of manhood. Tall, stoop-shouldered, shovel-chested, not devoid of understanding, but with the gleam of cunning in his eye that does not belong to sane, right-minded men.

The father, during life, cared for the child—little enough for him to do—and at death devised to him a small tract of farm land. There was a shed on the land hardly fit for sheep to herd in, but after his father's death the son reinforced the unbattened fence boards with which it was sided by old horse blankets and bed quilts, found a mate suitable in all regards, procured a license from the

authorities of the state of Indiana to do so, and started in to raise American citizens. His efforts were crowned with success. Three children were quickly born to him, after which a passing tramp stopped at his house and, not content with stopping, stayed. The wife and the tramp established open relations of undue intimacy, and in the course of a few months she applied for a divorce. Having, upon the facts stated, good cause, she in due time procured a decree, which was given her by the authorities of the state of Indiana as cheerfully as the right to marry had been. With the divorce she had a judgment for alimony that took half the land. The lawyers who had so successfully defended the husband took the other half. The discarded husband in a few months found another woman, procured another license to marry from the state, and founded another family. By the second marriage he has had at least three children. They are of dull intellect; some of them have been in the insane asylum, some in other charitable institutions, and they now are beginning to have children of their own.

It has been a painful path the race has trod. Nations have decayed and been replaced by virile barbarians. We can not know what the future is to be. Its possibilities are appalling enough; it is better not to know.

The trustees of the home for the feeble-minded, in a report bearing date October 31, 1898, after calling attention to their need of more room and more money to enable pending applications for admittance to be approved, use the following suggestive language:

"Besides those who under the present law are entitled to admission, there is a large number for whom, more than any other class of defectives, it would be good public policy for the state to provide. These are the idiot and imbecile adult females of child-bearing age, many of whom are in our county poor asylums, most of whom are already the mothers of defective or illegitimate children; few of whom, under present conditions, will escape repeated motherhood until past the reproductive age. We should be dere-

lict in our duty to the state if we did not call your attention to these facts, and ask of you, and through you of the state of Indiana, for the means to remedy them."

Imbeciles, epileptics, chronic paupers, habitual criminals and drunkards, and persons afflicted with transmissible and incurable disease, are not fit parents. Their children do not have a fair chance. The victories of life and the triumphs of the world are not for them. The society that produces them carries within itself the elements of its own decay.

There is need of a uniform divorce law. That two persons may sustain the relation of husband and wife in one part of the United States and be wholly independent of each other in another part, is a great absurdity; but the divorce evils would be remedied more by uniform marriage laws than by uniform divorce laws. They should go together; but no system of divorce or non-divorce can atone for the absence of all regulations tending to restrict unfit unions.

Contracts made between incompetent parties, contracts made without consideration, to the disadvantage of the community and the parties, need to be canceled, and will be so long as they are made.

Pending uniformity of both marriage and divorce, local regulations are of primary importance. In Indiana, "marriage is a civil contract, into which males of the age of eighteen and females of the age of sixteen, not nearer of kin than second cousins, and not having a husband or wife living, are capable of entering." (R. S. 1881, § 5324.)

As between the immediate parties, marriage is a civil contract, but as between them and the state, or organized society, marriage is more than a civil contract. It is a status of relation. (Pence v. Aughe, 101 Ind. 320.)

It may be solemnized by ministers, priests, judges, justices of the peace, and by certain societies according to their rules. (R. S. 1881, § 5326.)

For unlawfully solemnizing a marriage, the person offending shall be fined not more than $500. (*Id.* § 5333.)

By another section, knowingly undertaking to solemnize marriage without authority is punishable by a fine of not less than $50 nor more than $500, to which may be added imprisonment in the county jail not less than ten days nor more than three months. (*Id.* § 2148.)

Before any persons, except members of the society of Friends, shall be joined in marriage, they shall procure a license from the clerk of the circuit court in the county where the female resides, directed to any person authorized by law to solemnize marriages, and empowering him to join the persons named as husband and wife. (*Id.* § 5327.)

Such license shall not be issued by the clerk without the consent of the parent or guardian, if any, where the female is within the age of eighteen or the male within the age of twenty-one years. (*Id.* §§ 5328–9.)

Every clerk who shall issue a license contrary to the provisions of this act shall pay to the state such sum, for the use of the common schools, as the discretion of a jury shall deem right, and it is made the duties of the respective prosecuting attorneys to prosecute all such suits, for which they shall receive a docket fee of $20, to be taxed as cost. (*Id.* § 5332.)

No express authority is given to the clerk to refuse to issue licenses, except in the instances enumerated.

Various marriages are declared void, the issue being protected from illegitimacy.

Void marriages are those: first, where either party had a wife or husband living at the time; second, where one of the parties is a white person and the other possesses one-eighth or more of negro blood; third, where either party is insane or idiotic at the time. (*Id.* § 5325.)

No person having one-eighth or more of negro blood may be per-

mitted to marry any white woman of this state, nor shall any white man be permitted to marry any negro woman or any woman having one-eighth or more of negro blood.

The penalty for a violation of this section is a fine of not more than $1,000 nor less than $100, and imprisonment in the state's prison not more than ten years nor less than one year. (*Id.* § 2136.)

Whoever assists or counsels such prohibited marriage shall be fined not more than $1,000 nor less than $100. (*Id.* § 2137.)

Marriages prohibited by law on account of consanguinity, affinity, difference of color, or where either party has a husband or wife living, if solemnized within this state, shall be absolutely void without any legal proceedings. (*Id.* § 1024.)

When either party shall be incapable from want of age or understanding, the marriage shall be declared void on the application of the incapable party. (*Id.* § 1025.)

In the case of Pence v. Aughe, 101 Ind. 320, the supreme court held that the guardian of a person of unsound mind had no power to maintain an action under the statute where his ward had been led through a marriage ceremony in form, without having sufficient mind to comprehend the purport of the transaction, and being at the time mentally and physically so weak as to be wholly unfit to care for himself.

The incapable party, himself, alone has standing in court. That he will act with regard to the interest or for the protection of society, the third party to the arrangement, is impossible.

The law as it stands is not coherent or systematic upon this subject, and needs to be rearranged and rewritten.

It is submitted that imbeciles, epileptics, chronic paupers, habitual criminals and drunkards, and persons afflicted with transmissible and incurable disease, ought not to be licensed or allowed to marry. The person applying for a marriage license ought to be required to negative the existence of the disqualifying facts. A simple form of written application could be easily devised, an-

swers to the questions of which would ordinarily expose absolute unfitness. The officer issuing the license should have power to refuse it in his discretion. There should be a competent board to whom prompt and inexpensive appeals could be at once taken. The fee now charged is large enough to cover all expense. It is easier to agree upon general propositions than upon details, but any good faith measure will result in improvement of the existing law. As it stands now, a leper may lawfully demand and probably would for $2 receive a license to marry and perpetuate his kind in Indiana.

Startling innovations are neither possible nor desirable. Put responsibility upon the intelligent officials of the different counties of the state, and no bad results will follow.

There is in one of the counties at this time an imbecile man, under guardianship, who has owned until recently one hundred acres of excellent farm land. He is the father of eight children. They have a guardian; their grandfather had one before his death. The wife not long since obtained a divorce, and two of the children have been raised in the poor-house. The state voluntarily sanctioned and aided in the formation of that relation on account of which these innocent ones were born into want and hardship and shame. They do not and can never have that equal opportunity to which men are entitled. Neither school-house, asylum nor hospital can give them that now.

There is no law equal to the law of public opinion. The judgments of the neighborhood are more dreaded than the judgments of the court. Public opinion consults the statute. That which is there forbidden it condemns. At that which is not forbidden it shrugs its shoulders. Upon acquaintance it never fails to approve and aid in the enforcement of good laws. When it does, self-government will be ended.

To the extent indicated, the state may justly act, regardful of the right of every citizen, and regardless of the right of none.

A considerable number of human beings are annually burned and lynched in various parts of the United States. We all condemn the mob and uphold the law, yet there is an unexpressed reservation. If our own families were outraged, it would take form.

Emasculation might be added to the legal penalty in cases, and while it would be an unusual punishment, in view of the advanced stage of surgical skill it would not be a cruel one, while it would be strictly in the line of reformation.

We have entered upon a new era in national affairs. The American has gone abroad. Willing or unwilling, wanted or not, he has gone abroad, and gone to stay. With the wisdom or unwisdom of it there is no use to quarrel. Henceforth we are subject to new and demoralizing influences.

The old dangers are better known than ever before. The medical profession has made of late years an enviable record in the line of original investigation. The results of its research have been stated with almost brutal frankness. We are told that one-fourth of the human race dies during the first year of life, largely because of defective parentage and ignorant neglect. That from 10 to 14 per cent. of deaths are caused by the "great white plague" that has at some time entered nearly every home and stands waiting at the door of all. Those who search out such facts may be pardoned for proposing extreme measures. The work of making laws is not in their hands, directly, at least.

The law is written as well as enforced by the lawyer. He has not failed in his duty, heretofore. Fast enough, but not too fast, progressive ideas have been given form.

That which the bar approves will be the law, and therefore it has seemed appropriate to call the attention of this honorable body to that which is the moral and should be the legal right of the next generation—the right to be well born.

THE LAW AND THE STRIKER

It will be recalled that Professor Rogers read[1] before this association in 1898. I did not hear his paper, and the consequence has been a very considerable waste of my labor during the recent weeks. The farther consequence will be a considerable saving of your time this morning. It happened thus: The invitation, highly prized, to read before you was followed, at my request, by the suggestion of a subject. Accepting the suggestion, made as it was by members of the executive committee, I proceeded in the preparation of a paper on the subject just announced. A few days ago I learned accidentally that Professor Rogers had covered the same ground exhaustively, ably. It has only remained for me in my extremity to abandon the paper prepared, to comment briefly and supplementally on the decisions and occurrences of the last two years, and to question one or two of the conclusions of Professor Rogers.

Within a few months Mr. H. D. Lloyd's book, entitled "A Country Without Strikes," has been published. It is an account of an examination, on the ground, into the workings of the New Zealand Conciliation and Arbitration Act of 1894. The act is unique. Its author, Mr. William Pember Reeves, ex-minister of labor, says[2] that it frankly encourages the organization of both capital and labor, "admits that they are bound to differ, and only insists that if they can not settle their differences in a friendly and peaceable manner, they must go to the state, which will provide them with machinery for doing so." The important part of the machinery to which he refers is a court of arbitration. It consists of three members appointed by the governor-general for three years. One is

[1] 1898, State Bar Association of Indiana, 103.
[2] A Country Without Strikes, 111.

appointed from those nominated by the workmen, the second from those nominated by the employers, and the third from the members of the supreme court. The state never takes the initiative. The machinery is put in motion by the complaint either of an employer or of an organization of workmen. For an interesting feature of the law is that it applies only to industries in which there are registered, or, as we should say, incorporated trades-unions; and in the awards the unionists are given the preference of employment over the non-unionists. "The moment either side with a grievance, or any apprehension of a strike or lockout, summons the other before the * * * court, it becomes a punishable offense for the workmen to stop work, or the employer to close down. Both must keep on until the * * * court has come to a final decision."[3] Violations of the court's decrees are punishable in the court's discretion. The workmen have brought most of the complaints, and most of the decisions have been in their favor. As to the results, the testimony of Judge Williams, formerly the presiding judge of the court, is interesting. He is described as belonging, "politically and socially, to the class which would be by inheritance and acquirement least likely to be sympathetic with any form of labor legislation."[4] He says: "There are, I venture to think, good grounds for hoping that the experiment will be ultimately successful. It is certainly not time to say that the experiment is a failure."[5]

The publication of Mr. Lloyd's book has occasioned renewed advocacy in this country of so-called compulsory arbitration. It certainly is significant that in a country which had been brought to the verge of civil war by labor troubles there has not been a strike or a lockout during the five years that the law has been in effect, and this despite the fact that there has been an average of a case a month before the court. It is also significant, however, that, as

[3] A Country Without Strikes, 20.
[4] A Country Without Strikes, 163.
[5] A Country Without Strikes, 165.

Mr. Lloyd points out, the experience under the law has been during a period of a rising labor market. It remains to be seen what the results will be during a period of a falling labor market. About all that can be said is that the experiment is an exceedingly interesting one, which may become instructive for us, but that it has not yet established any conclusion on which we can rely as against the argument presented some years since by Judge Cooley to the American Bar Association.

Another recent book is that by Mr. F. H. Cooke on "The Law of Trade and Labor Combinations." It has emphasized[6] the present recognition, both here and in England, of the legality of the strike. The courts have not followed Judge Jenkins in his conclusion that "a strike is essentially a conspiracy to extort by violence." For strikers as such, for workmen at will who quit their employment concertedly, the law has no word of interference or prohibition. "Workmen at will who quit their employment concertedly," is a definition substantially similar to that accepted by Professor Rogers, but he adds[7] that "the intent of the parties" determines the legality of the strike. Now, it is suggested, deferentially, not only that "the intent of the parties" does not determine the legality of a strike, but also that it has nothing to do with the legality of a strike. It is suggested further that this same proposition about the "intent" of strikers has been the cause of much confusion. The confusion in England was ended some two years ago by the decision of the House of Lords in Allen against Flood.[8] Mr. Cooke has interestingly and repeatedly called attention[9] to the great importance in this connection of this notable case. The vast influence likely to be exerted by it on the law of labor troubles will be suggested by a consideration of the facts involved. You will recall that they were as follows:

[6] 31.
[7] 1898, State Bar Association of Indiana, 106.
[8] L. R. App. Cas., 1898, 1.
[9] Trade and Labor Combinations, IV.

A walking delegate warned an employer that, unless he discharged two men, not members of the union, he, the delegate, would call out all the union men. The employer, in fear that the threat would be carried out, discharged the two men, their employment being terminable at will. The discharged men sued the delegate for damages. A judgment for the plaintiffs was affirmed in the court of appeals on the ground that an intent by the delegate to injure them had been shown. After prolonged and unusually exhaustive consideration, the House of Lords decided that the intent to injure was not actionable; that an act is not rendered unlawful by a bad motive. This means that the right to strike is a right absolute, unconditional. It means that workmen at will have the right to threaten to quit and to quit regardless of their purpose in so doing; regardless of whether they have "just cause or excuse" for so doing; regardless of whether injury, either to their employer or to others, is intended as a result of their so doing. It means the legality of all strikes, including—and this is particularly important—sympathetic strikes.

It would not be profitable to point out in detail that many dicta and some decisions by our courts in labor cases have not been in harmony with this English decision. Considerable and irrelevant rhetoric has been directed from the bench at the unholy intentions of strikers, but the acceptance in this country of Allen against Flood will not involve the overruling of a generally accepted doctrine. It will involve, however, the refusal of injunctions like that issued[10] within the year by a Massachusetts court restraining union workmen from all acts "for the purpose of compelling him (the employer) to discharge any person rightfully in his employ." It will involve, too, the very considerable revision of articles like that published in an important law magazine, and from which I quote the following:[11]

[10] By Judge Richardson of the Superior Court of Massachusetts.
[11] 33 Am. Law Reg. and Rev. 615.

If a strike "have no valid reason, but is merely an attempt to coerce the employer to accede to the demands of his employes by leaving his service in a body, it is an indictable conspiracy at common law."

And, as if that were not enough, the author adds:[12]

"All the arguments against the exercise of such a power (to enjoin) rest on a fancied arbitrary right of an employe to work or not for whom he pleases."

No, it is not a "fancied" right, and the universal acceptance of the fact that it does not depend on the existence of a "valid" reason, the universal acceptance of the simple rule that the motives of strikers are not to be investigated by the courts, will result in the avoidance of much confusion. Organized labor has resented, and we believe properly, inquiries into the purposes of its strikers. It may understand that the meaning of Allen against Flood is that the purposes of its strikers, be they never so unrighteous, will be considered only at the bar of public opinion, not at the bar of the courts.

A brief consideration of another doctrine important to the striker, one of those doctrines known under the head "Loss of Service," has been suggested by a recent decision by the New York supreme court. All the members of a trades union agreed they would not work for unaffiliated employers. Certain of them, at the instance of the union's walking delegate, thereafter withdrew from an employment forbidden by the agreement. The delegates, on the employer's application, were enjoined from causing such withdrawal from employment, even though they caused it without any threat or any intimidation; even though they caused the withdrawal of workmen who were bound by no contract with their employer not to withdraw; who were, however, bound with their union by a contract to withdraw, bound by a valid contract with

[12] 33 Am. Law Reg. and Rev. 620.

the union that undertook to pay them benefits from the dues of fellow-members.[13]

The decision was based on the ground that the delegate's action was an unlawful interference with the employer's business. Was it? To the contrary, it is confidently submitted that the persuasion of employes at will to quit their service is not unlawful. Any remnant there may be of a rule otherwise had its origin, as others have repeatedly pointed out, in the fourteenth century days of serfdom, when interference with the labor of a servant was of the nature of interference with a chattel.[14] Such a remnant is not fit for retention in the American law of the twentieth century, and in recent decisions it has had very meager sanction. Injunctions such as that issued in the case cited and that issued recently by Judge Freeman in the New York cigarmakers' strike, are of the kind that inflame dangerously, and it was good to learn a few days ago that the latter injunction had been dissolved on appeal.

Mr. Cooke's book—and I am more indebted to it than the specific citations would indicate—also directs attention to still another doubtful doctrine that concerns the striker, the doctrine, namely, that a combination may not always do that which an individual may do; the doctrine, in other words, that "an act, entirely lawful if done by a single individual, may be unlawful by reason of being done in pursuance of a combination of individuals to do the same act."[15] Against this doctrine, which has controlled or affected many decisions in strike cases, the recent English decision in Huttley against Simmons,[16] cited by Cooke, will, we believe, be very influential. Indeed, it seems likely to attain the same importance in the law of labor combinations that the Mogul Steamship Company case[17] has attained in the law of trade combinations.

[13] Coons v. Chrystie, 53 N. Y. Supp. 668, 24 N. Y. Misc. 296.
[14] 21 Am. Law Rev. 509; Cooke, Trade and Labor Combinations, 45.
[15] Cooke, Trade and Labor Combinations, 14.
[16] L. R. 1 Q. B. Div. (1898), 181.
[17] L. R. App. Cas. (1892), 25.

The action being for "conspiring with others to induce a person not to employ the plaintiff," it was held that what is not actionable when done by an individual is not actionable when done by a combination organized for the purpose of doing it. This view has received the important support of Sir Frederick Pollock in an article[18] cited by Mr. L. C. Krauthoff in an address[19] before the American Bar Association. An illuminating word on the subject, too, was said some years ago, in another connection, by Professor Wigmore:[20] "If for want of a legal right a plaintiff can not recover from a single defendant, he does not mend matters by joining another as defendant and calling his action an action for conspiracy." Mr. Krauthoff interestingly suggests that the notion about the wrongfulness of acts by combinations is a misconception of what should be regarded only as a rule of proof. He suggests, in other words, the difference between the probative force of a threat by an individual to do an act and the greater probative force of a threat by a combination to do the same act. It is gratifying to note that our own appellate court in Clemmitt against Watson,[21] also cited by Cooke, has refused to accept this doubtful and confusing doctrine about labor combinations, holding, to the contrary, that workmen at will, who combined for the purpose of threatening to quit and of quitting unless a certain fellow-workman were discharged, did only that which each could rightfully have done, and were, *therefore*, not liable.

So much, then, by way of brief comment as to what the workman at will may do—he may strike and threaten to strike, and may be limited by no confusion about motives; he may persuade his fellow-workman at will to strike, and may be limited by no confusion between workmen and chattels; he may combine with his fellows for

[18] 14 Law Quar. Rev. 107.
[19] 1898, Am. Bar Association, 379.
[20] 21 Am. Law Rev. 510.
[21] 14 Ind. App. 38.

the purpose of doing anything whatsoever that each may do, and may be limited by no confusion about conspiracies.

It remains to consider the remedies for the wrongs done or threatened to be done by strikers, for though, as I have said, the law has no word of interference or prohibition as to the striker, it has many and stringent words of interference and prohibition as to the means too often employed by strikers.

The feature of this part of the subject readily occurring as the most important is the injunction—important for two reasons. The direct effect of the issuance of injunctions in labor troubles has been important, and the indirect effect in the development of a political issue has been not less important. It can not readily be denied that the use of the injunction has been exceedingly important directly, in that it has saved much property and many lives. But not less important is the fact that by its use in labor troubles the confidence of a considerable portion of our people in the judiciary, particularly the federal judiciary, has been alienated. If it were true, as Professor Rogers' paper, perhaps unintentionally, leaves one to infer, that this alienation is the result only of alarmist declamation and vicious demagogery, we need not tarry overmuch in apprehension. But, to the contrary, it is true that sober-minded thinkers, patriots, many and wise ones, have given themselves earnestly to the consideration of "government by injunction," and the consideration by not a few of them has ended in warning. Among them are such men as W. H. Dunbar, Richard C. McMurtrie, Frederic J. Stimson, William Draper Lewis, Charles Claflin Allen, C. N. Gregory, and their judgment may well give pause.

One word needs particularly to be said—needs to be said in this presence, not, of course, for the purpose of informing, but for the purpose of reminding us to repeat it wherever opportunity offers. It is a word of distinction, a word by way of clearing the ground, a word the Chicago platform-makers, denouncing the federal ju-

diciary, understood not, and the wiser Kansas City platform-makers seemingly have understood. It is this: The phrase, "government by injunction," presents an issue that is political exclusively, is legal not at all.

When the supreme court of the United States unanimously decided the Debs case, the legal question was answered and answered for all time. And is it saying too much to say that no honest citizen, recalling the personnel of the court at that time, will doubt the answer was right? The honest citizen may stand for the political contention that the law should be changed. He may not stand for the legal contention that any judge who has acted or may act within the broad lines of the Debs case has done aught but his unavoidable duty. He may be a patriot and intelligent who cries out against the congress that will not relieve from government by injunction. He is not a patriot and intelligent who cries out against the court that enforces government by injunction.

But should the law be changed?

As one who sees but faintly, I can be sure only that it should be changed to provide in cases of indirect contempts that there shall be a written statement of accusation, allowance of time for answer, a trial on evidence as in criminal cases, limited punishment, and an appeal.

Perhaps—I hesitate too much over the great danger of disarming equity courts to say more than "perhaps"—some plan such as that suggested by Mr. Stimson should be adopted, and where crimes are enjoined, "the finding of a judge in the contempt process should take effect as the presentment of a grand jury;" perhaps statutes like that of Kansas,[22] giving the anomalous right to trial before the chancellor with a jury; perhaps the bill presented to congress by the American Federation of Labor—perhaps one of these, perhaps none. Though it is thus only to a doubting "perhaps" that consideration has thus far led, yet it is worth while again to consider,

[22] Laws of Kansas 1897, Ch. 106.

and yet again, seriously, whether the change should not provide also for trial by jury. Many reasons are urged. Two will suggest the others.

The first is that the so-called government by injunction has a dangerous appearance of infringing one of the fundamental guaranties of personal liberty.

The second is that it tends to impair an already insufficient confidence in our criminal procedure.

Let it be noted the first reason is not that the guaranteed right to trial by jury is denied—the supreme court of the United States has decided otherwise—but that the *appearance* of a denial is dangerous. Sending to jail a man who has violated an order to refrain from crime, and denying him a trial by jury because he is not accused of crime, is a distinction that satisfies us as lawyers, but is it not a distinction so difficult of apprehension on other than technical grounds as to suggest to us as citizens that there is a dangerous appearance of infringing the right to trial by jury? While it is less important, yet it is not vastly less important, that the fundamental guaranties should seem to be invaded than that they should be invaded actually and substantially.[23] And in view of the fact that the belief that an invasion, insidious and covert, is threatened by the new use of the injunction, is so general and so all but universal among the laboring men, it can, I think, be fairly said that its use is dangerous in its seeming, if not in its actuality. By "dangerous" I do not mean that we can even seem to any but foolish alarmists to be in danger of an early repetition of that extension of equity jurisdiction in crime which three centuries ago led Lord Coke to characterize the Star Chamber as a "court of criminal equity." I only mean that there is danger, perchance very slight danger, in a general, though mistaken, belief throughout an important and considerable class that they peculiarly are being

[23] This sentence and the two following are from an article by the writer in 5 Yale Review 39.

denied the benefit of one of our fundamental guaranties; that they peculiarly are being subjected to an odious process more Roman than English[24]

A consideration of the second reason mentioned is particularly suggested by the following passage from Professor Rogers' plea for the injunction:[25]

"Suppose, for instance, a statute existed prohibiting any one from injuring or destroying certain valuable property of another. Here the law would forbid a thing. But that alone would do little good."

The law forbids, but that alone does little good! That sentiment, the sentiment that a chancellor's decree adds to the force or the enforceability of the law's mandate, the sentiment that civil courts must be looked to for the punishment of crime, suggests, I believe, a real danger in government by injunction. Confidence in our criminal procedure is already lamentably, dangerously, weak.

Is not the use of civil process for the punishment of criminal strikers a confession to ourselves, to them and to the world that our criminal process is deemed inadequate? Is that not a dangerous confession that had better be made at least sparingly, reluctantly? Doubtless the confession is founded largely in fact. But does it not then behoove us, as lawyers and as citizens, to give ourselves earnestly to the changing of the fact?

In other words, and in conclusion, what is needed in this country, and needed superlatively, is a public opinion that will demand unerringly and remorselessly that criminal strikers be dealt with as criminals by criminal process, speedy and sure—a public opinion

[24] Statements made in the discussion of this paper suggest a citation of In re Lennon, 166 U. S. 548, in which it was held, quoting from the syllabus, that "to render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice."

[25] 1898, State Bar Association of Indiana, 112.

that shall sanction unhesitatingly the call of the last man of the militia in aid of that criminal process rather than that it fail—a public opinion that shall forever rid our country of the sentimentality that abets governors of the Tanner and Stevens ilk—a public opinion that shall instantly sustain the officer, be he the president with his army at Chicago or the sheriff with his posse at Lattimer, who, at any necessary cost, clears riotous strikers from the people's highways.

And the workman who shall hold himself against that public opinion will be unworthy American trade-unionism.

THE PRESIDENT: The paper just read is now open for discussion. If no one wishes to be heard, will Mr. Hogate take the chair?

Mr. Enoch G. Hogate assumed the chair, and Mr. Taylor then addressed the association as follows:

I think the very able and interesting paper which we have just heard read ought not to be allowed to pass without some discussion of the subject. Whether a strike is to be regarded as lawful or unlawful depends, as it seems to me, like so many other questions, upon the definition of the word. If we are to regard a strike as a mere concerted cessation of labor by a body of working men, it may very well be that it is not an unlawful proceeding. But I think that as the word is commonly used it means more than that; it means a concerted cessation from labor by a body of working men for the purpose of punishing their employer and compelling him by the infliction of injury to accede to some demand in which he will not acquiesce willingly, accompanied by acts intended and tending to inflict such injury. At least that is the form of strike that makes trouble. It seems to me that a strike in that sense is essentially unlawful.

If an employer's working men should seize him and imprison

him in a cellar, and advise him that he would be kept there until he had acceded to their demands, no one would hesitate in pronouncing the act to be unlawful. I can not see any difference in principle between injury of that kind and injury inflicted upon a man by the compulsory stoppage of his business, not merely by the withdrawal of his employes, but by their active and effectual efforts to prevent others from taking their places. In both cases the object is to compel a man to do something which he is unwilling to do by inflicting upon him such injury that he shall be coerced into compliance. And yet the people have decided that even such a strike is not unlawful, and the courts are following that decision by trying to find ways to accommodate the law to it. So far, the decisions have proceeded upon nice refinements and distinctions, some of which appear to me to be rather attenuated.

There is no doubt that men who have no time contract are entitled to quit at will; and any number of them may quit at once. This assumes that they quit to quit. But we know that in the ordinary strike that is not the case. The strikers do not want to leave the service of their employer. They want to stay there on better terms, and they proceed to punish their employer in order to compel his consent that they shall return to his employment on the better terms which they demand. Is there any theory upon which this sort of compulsion can be reconciled with the law? If there is, it seems to me that it must be worked out in some such way as this. It always has been the law, as far back as we know anything about it, that under certain extraordinary circumstances a man has a right to do things which would be wholly unlawful under ordinary circumstances. A man may defend his person or his house with any degree of force and violence necessary to protect himself against wrong. But this he can do only when the situation is such that he can not have adequate protection by law.

The industrial changes which have taken place in modern times have created conditions of which the law has not yet taken cog-

nizance, and exposed men to wrong against which the law affords no protection. Outside of agriculture, the great body of men are compelled to work as employes in some capacity, while employers become fewer and fewer in number. If all working men were compelled to seek employment and deal with employers singly, each for himself, they would speedily be reduced to a condition of slavery. They would have no alternative but to accept whatever conditions of employment the employers saw fit to impose. It is as a refuge from this weakness and helplessness that working men endeavor to find strength and protection in organization. They combine in unions, and the union deals with the employer. When controversies arise which can not be adjusted by negotiation, the weapon of the union is the strike. The employer has the same sort of weapon. He can discharge his men if they refuse to come to his terms. But in these days of universal skill in all handicrafts and rapid communication, a strike is unavailing if the strikers are at liberty to do nothing but quit work. Others can speedily be found to fill their places, and they will have gained nothing and lost all. In order to make the strike effectual, the strikers must see to it that others shall not take their places. For this they naturally resort first to persuasion. When that fails, they just as naturally resort to violence, and proceed from one degree of violence to another.

Now, it can be said, I think, without doing violence to reason or fact, that the conditions which American business has forced upon working men are such as to leave them exposed to wrong without legal remedy. And in providing for themselves a remedy by means of the union and the strike, they are invoking in their behalf the same principle upon which the householder defends his house against a burglar. They are protecting themselves by acts which would be unlawful except for the circumstance which makes those acts necessary for the protection of rights for which the law has provided no other protection. Unless the doctrine of the legality

of strikes can be worked out upon some such line of argument as that, I do not see how it can be sustained at all.

This theory of the legality of the strike furnishes also a sort of guide to the limitation of its legality. A man's defense of his person or his house becomes a crime if it exceeds the necessity of the case. So the violence of a strike becomes unlawful if it exceeds the necessity of the case. Where that line is to be drawn is a problem for the courts. It would be a difficult thing to do by legislation. This, it appears to me, is the true meaning of that unmistakable edict of public opinion by which a strike is justified to the extent of severe punishment of an employer and considerable inconvenience to the public, but not justified when it reaches the extent of wholesale destruction of life and property, especially of the lives and property of those not involved in the struggle. It seems to me that the law, in order to reach the trouble, must recognize the facts. It must recognize that new conditions of society have brought within the domain of legislation a new subject of the utmost importance. It must recognize labor unions as social entities, as things to be authorized, governed and controlled in the interest alike of working men and employers, and society at large.

MR. W. P. FISHBACK: Gentlemen, much as I respect my young friend Woollen, and he knows I have been his friend and respected him since he has been a baby, because he is a promising young man, I do not think the bar association ought to permit the closing sentences of his paper to go by without some manifestations of dissent. This bugaboo of government by injunction, and I use the term "bugaboo" with due respect to my democratic friends who voted for the Chicago platform once and will vote for it again probably, must not frighten us away from some fundamental principles. Confronted by new conditions and new situations, when Chief Justice Marshall came to announce what have come to be recognized as infallible decisions upon constitutional law, he took the old familiar principles of the common law, and he took the written in-

strument which the constitutional convention of the people had ordained, and applied to it principles of interpretation which had been recognized as the fixed rules of interpretation from the very foundation of the common law. Now, this cry of "government by injunction" is simply a fling at the practice of the chancery courts that has been recognized and honored and has been regarded as essential to the welfare of the community for centuries. What is the decree of a chancellor? Can the judge sitting on the bench enforce his orders and his decrees? It is the bayonet back of the judicial office that gives it efficiency, and to the maintenance and enforcement of the humblest decision of the humblest magistrate in the United States there is the pledge of seventy millions of people that that judgment or that decree, until reversed, shall be enforced, if need be by bloodshed. Now, I would like to ask the gentlemen who insist on a jury trial in a case of this kind one question. Take the familiar case of a decree of foreclosure and the writ of assistance that a chancellor is sometimes required to issue in order to place the litigant in possession of property to which he is justly entitled. The court sends its officer out, and the man in possession defies the court. Is the court to call a jury to say whether the man is right or wrong in his refusal to obey the mandate of the court? Why, it is absolutely destructive of chancery jurisdiction. Take the great case of Debs, which is the firebrand which has set this flame. What was the fact? Here the whole business of the northwest and of the country was paralyzed. The mails were stopped. The public highways, the corporations that had been charged with the duty of carrying on the commerce of the country, carrying messages from the well to the sick, taking friends to the bedsides of their dying relatives—all this was stopped, or threatened to be stopped. The judge says to these gentlemen, "We will give you a *locus penitentiae*; don't do this; we will issue a warning; it is necessary for this government that these great high-

ways should be open; don't interfere with them for public reasons; we give you fair warning." In defiance of that, they continued. Would you call a jury in Chicago to try whether or not that mandate of the court should be enforced? Doesn't it strike you as being absolutely absurd, the mere suggestion of it? It is an extreme case. But Judge Woods very properly, in his decision, referred to the old familiar doctrine of purprestur, where there was an interference with highways in England by stretching a chain across a navigable stream, and the parties were requested to take it down, but refused to do it. Would you stop to try the question of the stoppage of the commerce of a nation by a jury to see whether the persons engaged in stopping it were right or wrong in a contest with their employer? It seems to me it is absurd to think about it, and we ought to be very careful about giving our adherence to those views that in cases of indirect contempt, where there is an absolute and clear violation of the order of the chancery court, that decision shall be an absolute nullity and a jury called in to determine whether or not the business of the nation shall go on. There must be some way of seeking this remedy. The supreme court said that the remedy sought was right. And the president of the United States—whom I honor for it—when the state and city officials were too cowardly to do so, performed the duty that the situation imposed upon him as the executive of this great land.

MR. WILLIAM P. ROGERS: Mr. Chairman, I want to say just a word. It has been two years since I thought of the paper that I read on this question. I have no doubt that it is subject to the criticism that has been made on it this morning, and to very much more. The paper was written from the standpoint of those who were insisting that the courts and legislatures of this land stood out against the laboring people, and that the laboring people were not now able to maintain their rights or in any way to secure their rights excepting by force. The paper was written for the purpose of showing that, instead of that being true, the reverse was true,

and that both legislatures and courts were continually engrafting in their laws and their decisions doctrines favorable to the laboring people; that whereas years ago it was a violation of law and a crime for people to conspire together, or to join together with a view to quitting labor simultaneously, now both the legislatures and the courts recognize that as right—something that may be done without violating any law. That part of my paper which was quoted by the gentleman who read the paper this morning, giving the illustration of the situation where one had property which was being destroyed by another, and there was a law in existence which prohibited the act of destruction—that part was given in answer to the argument made that a decree of a court was necessary, but that, if you have a law, the law alone is sufficient. I desire simply to amplify the illustration by saying this: that the enactment of a law alone is sufficient for nothing, unless back of the law there is the power to enforce it. I gave the illustration of a law passed by our own legislature which made it a crime for any one to blast oolitic stone within a certain number of feet of the property of another. Now, there is a law. That law makes it a crime to do that thing. But is the law in itself sufficient to prevent the act? By no means. There must be back of it the power of a court having the right to enjoin the doing of that thing, because, if you wait until the thing is done, hoping that thereafter you may punish the individual for doing it, you have waited until your property is destroyed, and so far as you are concerned your rights are all gone, because the punishment of the individual will not in any way aid you. So that the argument is practically the same as the argument given here a moment ago. What we need is the thing we have—that the court shall have power to prevent a crime being done, and the court, in preventing that, is injuring no one. I am very much in accord with the remarks made by the gentleman just now that there can not be such a thing as a right to a trial by jury for the punishment, or determining whether or not there shall be punishment for con-

tempt of the decree of a court of equity, without at the same time taking away the power of the court of equity to issue the decree. The reason is this: If a court of equity has issued a decree, an injunction, then it ought to have the right to enforce that decree. If it does not have that right, and you take the question before a jury, you are then taking from the court the right really to make a decree; because, it is not a decree that is of any value whatever unless the decree may be enforced; and you are saying that you will have one tribunal to make a decree and another tribunal to say whether or not that decree shall be enforced. I say, by that theory, we are taking away from the court of equity the power of a court of equity and making it a court without any power whatever to enforce its own order, but leaving the enforcement of it to another jurisdiction entirely. That, I think, is impracticable; that, I think, if done, takes away the efficacy of the remedy of a court of equity.

THEODORE P. DAVIS: Just one word, Mr. President. It is not a question, as it occurs to me, of the enforcing of the decree of the court, as has been suggested by the gentlemen, as the court has the power of the government to compel its enforcement. But the question, as it occurs to me, is this: a decree has been issued against, we will say, Professor Rogers and Mr. Fishback by a court of chancery. That decree may be enforced by all the power of the government that may be called to the aid of the court for that purpose. But suppose it is charged that I have violated the law in resisting or impeding the enforcement of the order of the court. I have been no party to the decree. It is charged that I have committed murder in connection with the enforcement of the decree. The question is, where and how I am to be tried on this charge. Have I not the right to a trial by jury upon the question of the crime with which I am charged? That is the point that I make. In other words, the court issues its decree; it has the power to enforce it; it calls whatever power is necessary to enforce it. But if

it is charged that certain persons, not parties to the decree, are guilty of crimes in resisting or impeding the enforcement of the decree, and they are brought before that tribunal, then they should have a trial by jury, as is shown by Mr. Woollen's paper, it seems to me.

MR. FISHBACK: I will ask you, Mr. Davis, if Debs was not made a party to the proceedings when this notice was served upon him by the court?

MR. DAVIS: I was not discussing the Debs case, or any political issue. I am simply aiming to amplify the point made by Mr. Woollen. I am giving my ideas upon that question. I don't care to enter into any political discussion.

MR. FISHBACK: I am simply asking a legal question. Would he be a party to the proceeding or not?

MR. DAVIS: I don't know who in fact were parties to the decree in the Debs case. It has been held, I understand, where they were not parties to the decree, that on such charge of indirect contempt the accused were not entitled to trial by jury.

THE PRESIDENT: Are there any other remarks? There being none, the chair will entertain a motion to adjourn.

THE SECRETARY: The committee on admission of members have reported the name of Mr. Louis Newberger and recommend that he be admitted as a member of the association. I suppose by consent we can return to that order of business and elect him at this time. Mr. Charles H. Worden, of Fort Wayne, is also favorably reported by the committee.

By unanimous consent the report of the committee was adopted, and Messrs. Newberger and Worden were duly declared elected members of the association.

On motion, the association adjourned.

AFTERNOON SESSION.

WEDNESDAY, July 11, 1900.

THE PRESIDENT: Gentlemen, the sessions of the association will be resumed.

MR. JOHN G. WILLIAMS: Mr. President, your committee appointed to audit the report of the treasurer of the association begs leave to report that it has performed that duty, and finds the report of receipts and disbursements correct in every particular, and that the balance stated in the report as being on deposit to the credit of the association in the Indiana National Bank was the exact amount on deposit with that bank to the credit of the association at the close of business yesterday.

THE PRESIDENT: I apprehend, now that you have heard the report of the auditing committee, it will be in order for you to approve and confirm the report of the treasurer. Shall that report be approved and confirmed by consent?

The report was so approved.

THE PRESIDENT: Gentlemen, we are to have the pleasure of hearing next a paper by Col. William Hoynes, of Notre Dame, on "The Law as an Educational Factor," and I take pleasure in presenting him to you.

THE LAW AS AN EDUCATIONAL FACTOR

In the treatment of my theme I will be mindful that brevity has the sanction of custom in the preparation and reading of papers at the annual meetings of your association.

In developing the subject chosen for my paper, I will first touch upon education in general, and then undertake to show, in the second place, that an education can hardly be called finished, in a strict sense, without at least an elementary knowledge of the law.

First of all, then, let us inquire "What is education?" The question has often been asked, but seldom satisfactorily answered. As in the case of another word of equally vexed meaning—the word "civilization"—there appears to be no generally accepted standard for it. That which constitutes education in the opinion of one person may be far from it in the estimation of another, just as our conception of civilization may not square at all with the standards of the Asiatic, the African, the South American and even the European. Our civilization might be as unsuited and disagreeable to them, in view of their fixed habits and environments, as theirs would be to us.

Like the law, the mutable standard of civilization usually adjusts itself to the conditions and wants of men and nations. And every careful observer knows that these vary from time to time, and are subject even to radical changes. A nation may be committed to a policy of peace to-day, and to-morrow spontaneously for war. There is nothing more fickle than the mob, save possibly the wind. As Horace Greeley says: "He who praises to-day may curse to-morrow." Whole communities seem at times to become insane in their wild, turbulent and intolerant advocacy of things that in cooler moments, or on second thought, they would disavow and re-

pudiate. Such exhibitions of popular feeling afford evidence of infectious diseases of the mind, as well as of the body. As epidemics sometimes sweep over the land, causing suffering, distress and death, so these diseases of the mind may assail communities and nations, causing a craze not less blind than vicious, not less cruel than fanatic, not less dastardly than detestable.

However, it may be stated as a general proposition that education and civilization are closely allied, and that without the one there can not be much room for the other. To educate consists in exercising the faculties in such way, by instruction and discipline, as to develop the natural powers and render them efficient to the fullest extent practicable. In short, education aims at attainment to the highest powers and qualifications within the scope of man's capacities. However, the natural gifts of some men surpass in brilliancy, power and resourcefulness the acquired knowledge of others. Some of those most noted in our history, not excepting Washington and Jackson, Clay and Lincoln, attended only primary schools, and studied in these but for a short time. The noted philanthropist Peter Cooper attended school for less than a year in his whole life; although after the founding of his institute for the free education of poor boys, he was wont to say:

> If I had such advantages as we can give the poorest boy now, how much more could I have done!

One of the ablest lawyers and most learned men in the state of Wisconsin, a man of charming personality—one who served his country with conspicuous bravery in the civil war and conspicuous ability in congress—found occasion in the course of a correspondence on other subjects to write me recently that he had never been inside the walls of a university or college, and that he had received but an ordinary school education. Yet in the Latin, Greek and several of the modern languages he is exceptionally erudite, while

in his general education he deserves to rank as one of the most accomplished scholars in the northwest. He attained to his enviable rank in scholarship by private study, and without the aid of a teacher.

On the other hand, there are many persons whose privilege it is to write in bewildering array and variety after their names the collegiate and university degrees and titles they received; and yet, considering their educational advantages, the want of tact or common sense exhibited by them in dealing with the practical affairs of life is hardly less than amazing. Presuming to know much, their acts and the opinions they express in regard to matters demanding some vigor and originality of thought prove clearly the narrow range and unreliability of their reasoning powers. You would expect even school-boys to show as much adaptability and intelligence in facing the difficulties and surmounting the obstacles to be encountered in the great world of enterprise and action. Possibly Steele had such persons in mind when he wrote:

> He that wants good sense is unhappy in having learning, for he has thereby only more ways of exposing himself; and he that has sense knows that learning is not knowledge, but rather the art of using it.

In these instances I refer, of course, to the exception, and not to the rule. I seek only to show that some minds may soar to the stars of destiny on the wings of favoring opportunity and natural endowments. In such exceptional instances their innate abilities and strength of character seem to stand them in better stead than could mere educational equipment.

Personally, I yield to no one in recognition of the value of learning and in appreciation of its utility to the individual and the state. It tends, as I believe, to develop the intelligence and capacity of the citizen, to suppress lawlessness, to strengthen the sentiment of fraternity and union among the people, to eliminate

from society the distrust and discord inherited from the savage state, to enhance the general welfare of the nation and afford assurance of the perpetuity of its free institutions. Not only do I concur with Daniel Webster in regarding "Education as the best police," but I go further, and say with Thomas Jefferson that "It is the only sure foundation that can be devised for the preservation of peace and happiness."

There have been and still are persons who entertain a contrary view, strange to say, but I am sure you will agree with me in believing that they belong properly to some benighted and oppressed part of the world rather than to a free and progressive country. Quite apposite to the subject is a quotation which I will venture to make from Bancroft. It consists in the language ascribed to Governor Berkeley, of Virginia, in discountenancing the spread of education among the people, and is as follows:

> The ministers should pray oftener and preach less. But I thank God there are no free schools nor printing, and I hope we shall not have them these hundred years; for learning has brought disobedience and heresy and sects into the world, and printing has divulged them, and libels against the best government. God keep us from both!

I can not undertake to estimate how many of you may have heard like sentiments expressed, but I have myself listened amusedly more than once to a very learned gentleman who stoutly advocated opinions quite analogous to those of Governor Berkeley, although contending further that the poor are rendered unhappy and discontented by education, which opens to them a domain of hopes and dreams that their condition inexorably bars them from entering or realizing. There is a material loss of time and money in educating them, he contends, with the result only of making them discontented with their lot, a disturbing factor in the orderly development of social conditions and a possible menace to the ulti-

mate peace and security of the state. To say the least, such sentiments seem very incongruous, and especially so when voiced by one who proudly points to the distinguished services of his ancestors in the revolutionary war—in short, an American of Americans. Such views, as I conceive, are based upon some latent prejudice, and serve rather to amuse than to provoke argument. At any rate, I have regarded this advice of Sydney Smith as quite pertinent in the matter:

> Never try to reason prejudice out of a man. It was not reasoned into him, and can not be reasoned out.

The stronger the current of the mighty river, the more certain the counter-moving eddies near its banks. And so in respect to the momentous question of education. The great current of opinion in its favor may not inappropriately be marked by the inconstant counter-flow of the shallows.

Ever pressing onward, ever inquiring and investigating, ever seeking greater proficiency and power to deal with and direct the forces of nature, the spirit of education and progress becomes at once an inspiration and stimulus to mankind. It calls ever for more light, renewed energy and increase of knowledge. At times it may take the form of what we call curiosity, as where designed to satisfy some trifling, transitory or prurient feeling of inquisitiveness. Of course, such would be a debased manifestation of it. But commonly it assumes an educational character, as where it concerns itself with useful facts additional to or explanatory of things known to us or things we are seeking to know. It is a law of our being to be active, and the love of education directs this activity to the acquisition of a better knowledge of such things. Though the way be dark, yet we grope; though results be not visible or definable, yet we struggle tentatively toward them. This persistent impulse is the key to invention, progress, development. It

stimulates and urges men on and on to the fullest limits of their natural powers. And it does not stop there. Some of the ulterior effects of its activity are thus briefly stated by Herbert Spencer:

> All observing instruments, all weights, scales, micrometers, verniers, microscopes, thermometers, barometers, etc., are artificial extensions of the senses; and all levers, screws, hammers, wedges, wheels, lathes, etc., are artificial extensions of the limbs.

Thus has been increased and broadened beyond natural limits the scope of vision and physical power in dealing with the forces of nature. In response to this spirit we are constantly seeking to improve the things that concern us or the things we control. Hence the call for the correction of alleged evils in institutions and states; for improvement in machinery and short-cuts or economy in time and labor; for progress in educational concerns and systems of jurisprudence—in short, for advancement in everything. As thought is linked to thought, one awakening and energizing another, so in every field of human effort each act naturally leads to or suggests another, all contemplating improvement or advancement and tending toward ultimate perfection. Let us but consider, for example, how man has progressed, step by step, from the bare hand and crotched stick in planting to the improved grain drill and the steam plow; from the rude flail and plodding hoofs of cattle to the steam-propelled thrashing machine; from the rough concave stone or mortar for grinding to the complex machinery of the great mill; from the primitive ox-cart, with wheels of wood, to the monster locomotive that swifter than the wind sweeps by with its long train of gorgeously furnished cars; from the rude canoe and ancient galley to the magnificent steamship that plows the ocean and rules the deep, and from the simple hand-press in printing to the intricate machinery of the great steam power-press which,

swifter than the enumerating capacity of any tongue, can print, fold and count even the largest newspapers.

However, I may repeat that this is a law of our being. And all institutions must respond and conform to it, or suffer the fate of burial under the shifting sands of time. In their conformity to it we behold intense action, and competition, and experimental groping toward progress. Everywhere we behold men and nations reaching out and endeavoring to acquire greater strength, skill, proficiency and power. Things that are passive, helpless or unchangeable are swallowed up or destroyed by the active forces of this incessant struggle. The same law that makes the minnow food for the fish, the robin prey of the hawk, the insect or worm a choice morsel for the robin, and the inoffensive lamb a dainty meal for the wolf or lion, makes also in the natural order, without the interposition of positive law and religion, the weak and defenseless among men slaves of the strong and aggressive, the careless and indolent mere tramps or pitiable dependents in competition with the active and vigilant, the ignorant and credulous unsuspecting victims of the crafty and unscrupulous, and weak or helpless peoples or states the conquered possessions of mightier and more warlike powers.

Education explains the present and reveals the future in the light of the past. It summarizes all history, brings to our knowledge all branches of human learning, exhibits the different nationalities of men in their social and political relations, makes known to us their languages and religious affiliations, familiarizes us with their literature and laws, discloses what they have done in the arts and sciences, and opens up the whole world of valley and mountain, forest and prairie, land and sea, to our contemplation and wonder.

What a broadening influence is thus exercised upon the mind of a true scholar! It enables him to trace the nearness of his relationship to all other men and creatures. He recognizes the mysterious fact that a certain kinship runs through all forms of life.

He realizes how closely we are united in common traits and impulses. He knows, as Emerson says, that "In going down into the secrets of his own mind he has descended into the secrets of all minds." He becomes persuaded that, after all, we constitute but one great family, and finds himself concurring with Seneca in saying:

> We are to relieve the distressed, to put the wanderer on his way, and to divide our bread with the hungry—all of which is but the doing of good to ourselves, for we are only several members of one great family.

Such knowledge of men, while insuring a broad charity and indulgence of their weaknesses, yet gives increase of power in directing and dealing with them; and to no one should this be better known than to the lawyer, whose duty it becomes at times to sound every chord of human feeling and passion.

But, aside from the practical benefits of education, it affords pleasures surpassing those to be derived from probably any other source in life. It brings us close to the great heart of nature. It gives a new significance to every star in the sky, to every flower that blossoms in field or garden, to every tree and plant of forest or woodland, to every bird that sings in grove or meadow, to every rock that comes from mine or mountain, or lies in the way to indicate the area of the great glacial fields that antedated the field of Paradise.

And now, in the second place, let us consider more particularly the relation of the law to education; or, if you please, let us consider it as an educational factor.

The ancients regarded law as the invention and gift of heaven; and, as none of them explained and stated its scope and object more strikingly than Demosthenes, a free translation of what he says on the subject may pertinently be given:

> The design and object of laws is to ascertain what is just, honorable and expedient; and when that is discovered, it is proclaimed as a general ordinance, equal and impartial to all. This is the origin of law, which for various reasons all are under obligation to obey, but especially so because all law is the invention and gift of heaven, the sentiment of wise men, the correction of every offense, and the general compact of the state, to live in conformity with which is the duty of every individual in society.

While that quotation may be regarded as sufficiently explicit in respect to the opinions of the ancients with reference to the origin of laws, yet Sophocles expressed so beautifully a like thought in his poetical numbers that, at the risk of being chargeable with cumulativeness of citation, I venture to quote from him:

> The laws dwell on high, heaven-born, ethereal, by Olympus begotten. Mortal man did not beget them, and never shall oblivion shroud them, for in them abideth the great God, who knoweth not the decline of years.

In the earlier forms of government, theocratic in the main, the laws were generally proclaimed and enforced as of divine origin. The theocratic government of the Jews affords probably the most striking example. As we read and have been taught, Moses received the Ten Commandments directly from the hands of the great Jehovah, and God spoke to His people by the voice of His prophets.

For many ages such appears to have been the dominant belief in respect to the origin and source of the laws. In process of time, however, a tendency toward cleavage or separation became manifest and pressed its way to recognition. Thus the Scriptures came to be regarded as more peculiarly the word and law of God, while the common and statutory laws afforded indubitable evidence of their own origin and facility of adaptation to the changing conditions of business and the affairs of life.

Of course, the natural law, as ordained by the Creator, existed from the beginning, as it exists now, and as it must always exist. It is definable as a body of moral principles which reason itself teaches—principles binding on all men. According to the *Pandects:*

> Natural laws, which are observed alike among all nations, are due to a Divine Providence. They remain in full force and are immutable. But the laws which are enacted by individual commonwealths are wont to be often changed, either by the tacit consent of the people or by new legislation.

To this law we ascribe the natural traits of parental and filial love, self-love and the instinct of self-preservation, social tendency and adaptability, the religious feeling, etc. This law fixes immutably our stature, complexion and span of life. It prevails over all other laws. If opposed to it they must be declared by all courts to be without validity or effect. The chief aim of the laws enacted by communities and states is to supplement the natural law and protect men in the exercise of their rights under it. All men are invested by it with the absolute rights of personal liberty, personal security and private property. And yet without human laws and impartial tribunals of justice to represent the government in applying them, the government itself looking to their enforcement, these absolute rights would be ineffectual as against the depredations and aggressions of thieves, robbers and murderers. Hence as men in the natural state advanced in experience and knowledge, they realized more and more the need of security and repose through law and government. They saw that otherwise the acquisition of property or things of value through their labor would serve merely as a temptation to the cupidity of the indolent and criminally disposed, and be tantamount to putting a premium on their own lives. They saw that there could be no property nor

general industry without security, and no security without law. Thus they were led step by step through the consciousness of a pressing necessity to give form to society and to organize government, clothing it with the powers which they had from nature to defend, protect and preserve their absolute rights.

The organization of our federal government affords so apt an illustration of how men originally entered into the social compact, instituting laws for their common protection, that it may be pardonable to touch somewhat in detail on the comparison:

When the independence of the thirteen original states was acknowledged by the British government, it was their privilege to organize thirteen sovereign states or governments, each possessing the powers that it now has, as well as the powers conferred by the constitution on the federal government. In such case it could claim to be as much a separate and autonomous nation as France, Germany or Russia. But it was seen that by this course the states would be greatly weakened and their independence jeopardized. It was believed that antagonistic and selfish interests, foreign overtures and conspiracies, internal complications and civil wars, would at least impair their credit, undermine their influence and threaten them with subversion and loss of liberty. In view of the situation it was agreed that to avert these perils and maintain the common independence a union of all the states would be necessary, and that a central government to represent and act for them in specified relations would be indispensable. Hence the federal government was organized under the constitution, and the people of the states transferred to it by that instrument all the powers deemed requisite for the vigorous exercise of its specified functions—powers that if retained by the states would be likely to cause friction and discord, if not possible conflict. These powers were granted to the federal government, and the states can neither claim nor exercise them any more.

So did men yield up, on entering into the governmental relation, powers claimable under the natural law to protect and maintain their absolute rights. These are now formulated into laws for the common welfare and protection, and the agencies chosen to enforce them must do so with absolute impartiality and an eye single to what is right and just. Otherwise they would betray a sacred trust and violate the purpose of their creation. But it is gratifying to state that no institutions founded by men have been more constant and faithful in fulfilling the duties of the trust thus committed to them. Despite upheavals in the social status, corruption in office, revolution in states and subversion of empires, the courts have never ceased to be mindful of their obligations to society and government. Even under the most adverse circumstances they have admittedly been the ultimate fountain of right and justice, the last hope of the oppressed and wronged, the last refuge of civic virtue and despairing patriotism.

The separation between what has been termed the divine and the human element of the law has proceeded so far that practically all ground for misunderstanding on the subject has been removed. The state deals with and punishes acts violating the express provisions of existing laws, while religion puts the seal of its condemnation upon thoughts deliberately entertained to violate these laws. Such thoughts can not be punished by the law of the land unless reduced to action. In this case it applies its prescribed penalty to the unlawful act, and if the thought leading to it can be considered at all, it is taken into account for the purpose simply of determining whether it should be viewed as criminal or tortious in its nature. A thought repeatedly entertained is very likely to grow into fixed purpose and force itself into action. From this point of view the service of religion in placing its prohibition upon it, as well as upon the act to which it leads, is conducive to the effectiveness of the law and the security and welfare of the public. So, while the church and the state have parted company in their rela-

tions to the law, the one dealing with revelation and the other with the law of the land, they are still mutually aidful in their work.

The law, needless to state, is not to be viewed as a system of arbitrary rules. It rests upon a consciousness of the needs of society. It adapts itself or is enacted with reference to these needs. To illustrate, when it becomes evident that a by-law is requisite in the administration of the business concerns of a corporation, the members meet and adopt it. And the same is true of the state, which may be viewed as a corporation on a large scale. The law draws its inspiration from the customs, social conditions and sense of independence of each people. Such is its guide, while the settled trend of transactions and affairs among men is its anchor. Burke says that "Law is beneficence acting by rule," while Coke characterizes it as "The perfection of reason." Sir John Powell states that "Nothing is law which is not reason." Particularly apposite, however, appears to be Dr. Johnson's definition:

> The law is the last result of human wisdom, acting on human experience, for the good of the public.

Not only is the law the highest manifestation of human wisdom and sound reason, but it serves also as a most important educational agency. It teaches not only directly, but by its analogies, and fixes in the mind a habit of close reasoning. It tends to create a method of thinking peculiarly its own. It directs investigation to the origin of things. It insists upon concentration and continuity of thought in the investigation and proof of the subjects with which it deals. And the habit of reasoning to which it leads is not restricted solely to subjects of legal cognizance. It is applicable to all the relations of life. Who has not heard men speak of a lawyer-like treatment of a matter that has been skillfully developed and convincingly proved?

The rules of pleading and evidence offer the surest means of ascertaining the truth in litigious controversies ever yet devised by

the human mind. With what facility they enable the trained intellect to separate the wheat from the chaff—the truth from falsehood!

The law is a key to the treasury of truth, as well as a temple for justice and wisdom. According to a respected authority:

> 'Tis the divine's part to convert by faith, the soldier's to overcome by force, the politician's to circumvent by art; but to the bar it especially belongs to prevail with men through means which their reason can comprehend, which their courage need not disdain, and which their honesty must revere.

The law is in itself a liberal education. There is no branch of human knowledge foreign to it. Each is subject to its care and supervision. In learning the law the mind seems to grasp and become familiar with many of the subordinate or minor subjects within the range of its concern and protection. To illustrate, from an educational point of view: In pleadings we have logic; in evidence, a study of human nature and the means of ascertaining truth; in the common law, established customs and the underlying motives of human action; in the statutory law, facts regarding the organization of states and the practical operations of government; in equity jurisprudence, the rules of ethics and the limitations of justly regulated conscience upon act and thought; in criminal law, sociology and prison reform and questions bearing upon the most vital issues of life and death; in real property, an outline of the feudal system and the subsequent changes regarding title that marked the growth of liberty among the people; in agency, partnership, insurance and commercial paper, a practical acquaintance with the varied and complicated transactions and affairs of the great business world, and in international law, deep historical research and the relations to one another in foreign affairs of the civilized nations of the world.

The general education received in schools and colleges is un-

doubtedly an excellent basis upon which to build and develop in preparing for effective work and usefulness either in the professions or the more common pursuits of life, but of itself alone it bridges none of the chasms to be crossed in the rugged domain of competitive strife. A knowledge of this fact has led many educators to declare that a person having no training in the law lacks an essential element of a complete education. They know that there is a practical philosophy inherent in its very nature which teaches of the opportunities and obligations of human life.

In Rome it was deemed disgraceful for any person of the patrician class to be ignorant of the law. The most notable names in history, from Demosthenes and Cicero to the present time, have been associated with it in some measure or degree. Blackstone and Kent delivered their lectures not to law students alone, but to those as well who sought a finished education by adding to their acquirements an acquaintance with the jurisprudence of their country. It is axiomatic that "Ignorance of the law excuses nobody," for "Every person is presumed to know the law." How, then, can an education be deemed complete without at least an elementary knowledge of it?

One who knows the law has a guide for every step he takes and every act he does. He knows that all agreements into which he enters involve the law of contract, and, familiar with the principles applicable to the subject, he is aware of his rights and duties and can state whether or not a valid agreement has been formed. If some act be done which ought properly to form the basis of a contract, he knows that the law itself is capable of creating one under the quasi-contractual relation. Proceeding further, if he be negligent in the performance of his undertakings, or the duties assumed by or devolving upon him, and injury to another results therefrom, he knows that he is liable to an action of tort, and may be required to respond in damages. Should he be attacked or de-

prived of his property by a thief, burglar or robber, he would know that a crime had been committed, and that, on complaint by him, it would be the duty of the state to prosecute and punish the offender. If his property interests are threatened with irreparable injury, or such as will not admit of adequate compensation in damages, he knows that he can have recourse to equity, which has power to forbid by injunction the apprehended wrong. In traveling, he knows the reciprocal rights and duties existing between himself and the carriers and inn-keepers that he patronizes. In his dealings with partnerships, corporations and employers of men, he knows the nature and range of his rights and duties and of their undertakings and responsibilities.

In short, he recognizes the fact that all progress would cease, civilization be turned backward and anarchy enthroned over chaos but for the saving hand of the law. He is conscious that the egis of its protection is extended both by night and day over the unborn child, the helpless infant, the thoughtless youth, the matured man, the aged patriarch, and him who has paid the debt of nature and gone to his final rest. He knows that we are all within its care and protection. By night and day, on land and sea, in valley and on mountain, in field and forest, in town and country, it is ever with, around and over us, ever assuring by its presence, ever guarding by its vigilance, ever protecting by its power.

On motion of Mr. Theodore P. Davis, the thanks of the association were extended to Colonel Hoynes for his attendance upon the meeting of the association, and for the interesting paper which he has read.

MR. GEORGE L. REINHARD: I desire to move that the paper of Colonel Hoynes, together with all other papers that have been read, be published in the minutes of the proceedings.

The motion, being duly seconded, was adopted.

MR. T. E. HOWARD: May I make a remark at this point? It seems to me that the greatest value of the publications of this association would be secured by publishing them earlier than heretofore. It seems to me that these matters, which are of so much interest to the association when the papers are read and the discussions had, would be of very much more value if, while they are somewhat fresh in our memories, the publications were completed and the transactions of the association distributed. I would therefore suggest the propriety of asking that the publication be made earlier, say within a month, or two or three months. Very much of the value of this year's proceedings depends upon their early publication and distribution, so that we may be enabled to make use of the suggestions and views that have been here expressed. An earlier publication, it seems to me, will make of more value those papers which have been prepared with so much care and labor for the advantage of the association. I therefore suggest that the publications be made earlier than heretofore.

A MEMBER: Put it in the form of a motion.

MR. HOWARD: I would if it were necessary.

THE PRESIDENT: I do not think that that will be necessary. I suppose that the preparation of the matter devolves first upon the committee on publications.

THE SECRETARY: I suppose it ought to, Mr. President. I have had some experience, that I will give to my successor with great willingness, about printers in this town, one of whom used four months in putting this last report in type. It would seem to me extremely undesirable to have that printer for this year's report. A portion of the delay I was responsible for. I endeavored to get a complete list of the local bar associations of the state, believing that it would be of service to every member of the association, and I wrote to every circuit judge in Indiana. Half of them responded promptly. If any of you have had occasion to correspond with circuit judges in Indiana, you know how long it took to hear from

the other half. I never got answers from ten or twelve of them, and the report was incomplete in that respect. I hope those judges can be trusted to reply, or induced to reply earlier this year. But a new printer will have to be procured.

A MEMBER: We have a very efficient secretary, and I hear it suggested that there is not likely to be any change in that regard, and for the purpose of enabling him to insist that the publication shall be made earlier, I move that the secretary be requested to secure the publication of these proceedings within one month after we adjourn.

THE PRESIDENT: Now, I suppose that raises a practical question as to what can be done. Sometimes there may be some delay in getting matter from the persons who have contributed it; sometimes papers have to be revised; and, with regard to the proceedings on the floor, of which a stenographic report is made, it is very desirable that that report shall be submitted to the various speakers, that they may revise it, and they usually ought to abridge what has been reported. As a practical matter, I expect that thirty days would prove to be the least time within which it could be done.

THE SECRETARY: It ought to be done in thirty days, and it seems to me that, in any contract made for printing, there ought to be a provision that the work be finished in four weeks. I can say for Mr. Evans that he will have his part of the report in a week, but I can not speak for any printer.

THE PRESIDENT: It is moved and seconded that the secretary be requested to use his best endeavors to have the proceedings in print and ready for distribution in thirty days from the adjournment of the session—which, of course, will not subject the secretary to capital punishment if he should be unable to comply with it.

The motion was adopted.

THE SECRETARY: The committee on the admission of members report favorably to the admission of Daniel J. Moran, of Ham-

mond, and Marcus R. Sulzer, of Madison, both of whom are in the city and were here this morning.

The report of the committee was adopted, and the members admitted by unanimous consent.

THE SECRETARY: Mr. President, the executive committee directed Mr. Ketcham to report for the committee on the subject of the celebration of John Marshall day, and yesterday he notified the session that he would make a report to it to-day. Judge Carter, a member of this association, is trying a case in the superior court here, in which every lawyer taking part is a member of the association, and none of them are here. Mr. Ketcham is in that case. He telephoned me to-day, requesting me to say that he and Mr. Hawkins and Mr. Smith and Judge Carter would be necessarily kept there. He wants the association to act on the report of the executive committee.

I can say this for the executive committee. John Marshall was appointed to the supreme bench of the United States on the fourth day of February, 1801. It has been proposed by the American Bar Association that it shall celebrate the one-hundredth anniversary of his going on the supreme bench, and that the state associations take similar action. The Illinois and Ohio associations propose to take action on John Marshall day by having meetings and a speech by some distinguished lawyer. It was proposed by the executive committee that, if it seemed agreeable to the association, some distinguished man be invited to address the association here on this anniversary, so that Indiana might be in line with the bar associations of other states at that time. I have presented the matter to you for your action.

THE PRESIDENT: I will add to what the secretary has said that it was the view of the executive committee that, while its life terminates with the adjournment of the present session of the association, and the duty of making such arrangements as it might be necessary to make for the observance of the day would fall upon

the next executive committee to be selected this afternoon, the association itself ought to determine, while together, whether it desires to commemorate the day or not, and that action must necessarily be taken before the adjournment of the session, and before the incoming executive committee will come into existence. So the question, I think, may be fairly stated to be this: Is it the wish of the association that there shall be, upon the fourth of next February, a celebration of that sort, commemorating the appointment to the supreme bench of the United States of its most distinguished chief justice? I hope the association will consider it to be in line with its public and patriotic duty to have such a celebration. There will be such services or proceedings in many, if not all, the states. It will be, of course, for the executive committee to determine, if you do not give specific directions, what shall be the specific form of the celebration. It might be a banquet, or it might be a meeting simply, at which an address should be delivered, and at which there should be patriotic music and songs and speeches. All of that will be left to your executive committee, unless you specifically limit them. Now, if that is the feeling of the association, I suggest that some member move that the incoming executive committee be directed to make suitable arrangements for such a celebration.

MR. TIMOTHY E. HOWARD: Mr. President, I am not familiar with what the executive committee have been considering in relation to this matter, but it strikes me that it would be well that this commemoration should not be what might be termed flat; that it should not be overlooked and celebrated in anything like a perfunctory manner; and it has occurred to me, and I express the thought for whatever it may be worth, that it might be well to defer the celebration to the annual meeting of the association, and that the meeting of the association next year, in all its papers and subjects and other exercises, be a celebration of the one hundredth anniversary of John Marshall's ascendancy to the supreme bench. I am a little afraid that it is more than this association is prepared to

undertake to successfully carry out, to have an annual meeting besides a celebration in the year 1901. It seems to me that we might have a much better celebration by devoting next year's meeting exclusively to the commemoration of the services of John Marshall. I offer the suggestion.

MR. WILLIAMS: I would like to call for the reading of the report of the executive committee on this question; I think it contains a recommendation that would present the matter to the association in a little clearer light.

THE PRESIDENT: I am not aware that there was any written report.

THE SECRETARY: Mr. Ketcham was directed to make an oral report, and, being absent, I undertook to perform that duty for him.

MR. WILLIAMS: Then I move, Mr. President, that the incoming executive committee be directed to make such preparations as in their judgment they may deem proper for the observance of the celebration of John Marshall's day on the fourth day of February, 1901.

MR. THEODORE P. DAVIS: Mr. President, it occurs to me, before we vote upon that question, that it would be advisable to hear from the members of the association who do not reside at or near Indianapolis. So far as we who are here are concerned, we would be in favor of the celebration on that day, and the only question is whether the out-of-town members are willing to leave their homes to come here at that time. If we undertake to have that celebration, we ought to have a reasonably full attendance, and before voting upon the question, I think we ought to hear from the gentlemen who reside at Fort Wayne, Lafayette, Evansville and the remote parts of the state, to know whether they will come here at that time and participate.

MR. W. P. ROGERS: The motion does not indicate that that celebration is to be held here.

MR. OLIVER H. BOGUE: Mr. President, as Judge Davis has just said, we are all heartily in favor of the celebration, but this motion provides for an extra meeting of the association. We have, perhaps, three or four hundred members, and here in midsummer, when no courts are in session, we have perhaps less than one hundred members in attendance. My own idea is that a meeting held on the fourth of February will not result in the attendance of very many from outside of the city of Indianapolis. I therefore concur most heartily in the suggestion that this celebration be at the next annual meeting. We have waited one hundred years for this celebration, and to wait a few months longer will not detract any from our zest in the celebration or our enjoyment of it. I therefore move to amend the motion by suggesting that the executive committee be requested to arrange for this celebration in connection with our next annual meeting, and not have a special meeting.

MR. TIMOTHY E. HOWARD: I second the amendment to the motion.

THE PRESIDENT: It is moved and seconded to amend the motion to provide for the holding of the celebration of John Marshall day in connection with the next annual meeting of the association, instead of the fourth day of February next. Are there any suggestions?

MR. JOHN G. WILLIAMS: Mr. President, I hope that amendment will not prevail. The idea—and it is a mere idea, a matter of sentiment—is that we should all unite in the celebration on the same day, in paying respect to the memory of this great and departed jurist. For us to meet here one day, over yonder another day, over yonder still another day, or another month, deprives it of that unanimous sentiment, that hearty sentiment that is due to the occasion. We might with the same propriety celebrate Washington's birthday on the fourth of July instead of the twenty-second of February. Now, none of us can say that we will be here on the fourth of February, but we can say that we will try to be here,

and have one voice joined with the others, unanimously rising at the same time in honor of the man whose memory we revere.

MR. TRUMAN F. PALMER: Mr. President, the original contemplation of the celebration of this day was by one Mr. Moses, of Chicago, who suggested it to the American Bar Association. With yourself and others I happened to be present at Buffalo during the last meeting, and there the views of Mr. Moses were adopted, and the intent and plan was that this celebration should be in every court in the United States. It was suggested by him and by his circulars sent out, that a lawyer, or some one who might deliver a proper address upon such an occasion, should be invited to address the members of the bar and the people of the place at the court house upon that occasion. That was the original contemplation, and was the intent of the American Bar Association, and also the view of Mr. Moses, I think. The planning for a celebration as we have suggested, or as has been suggested here, is somewhat in conflict with these views. For myself, individually, I think the plan as originally proposed had better be adhered to in the recommendation of the bar association, that there be an address in this and the other county seats upon that day. I think that would be the best plan.

MR. ULYSSES S. LESH: Mr. Chairman, I am opposed to the amendment, not so much because it might be contrary to the views of Adolph Moses, of Chicago, or the action of the American Bar Association, but it seems to me that to postpone the celebration of John Marshall day until the next annual meeting would tend to divert action at that meeting from more important business. It seems to me that we can not afford to devote an annual meeting such as we have had here to the mere celebration of any anniversary of that kind, and I think the idea of having some noted lawyer deliver an address at Indianapolis on the fourth day of February next would be an entirely appropriate celebration. Let those who care to come do so, and those who do not care to need not come.

MR. T. E. HOWARD: That is what I am afraid the celebration will be if we attempt to have it on the fourth of February. It will be a matter of form merely, whereas I think that if we devoted the next annual meeting to the celebration of the one hundredth anniversary of John Marshall's accession to the chief justiceship of the supreme court, our publication of next year would be one of the most valuable commentaries upon the life and services of John Marshall that might, perhaps, result from meetings in any state. We might, perhaps, have not simply one paper upon John Marshall, but I think all the papers and all the exercises should be of the John Marshall character, and in that way we might have all the advantages that we have now from our annual meeting, and have all the proceedings, at the same time, a monument to that great man. It seems to me that, as has been so well said, the lawyers of this state can not afford to come; their business will prevent it on the fourth of February. We have had some experiments before as to the proper time for the meeting of the association, and it has been found practicable to have it in vacation. If the celebration is at our annual meeting, it will be well attended; there will be comparatively as large an attendance as we have had at the other annual meetings of the association, and the name and memory of John Marshall will be appropriately celebrated. It is the one hundredth anniversary, and not particularly a fourth of February celebration; it is to the memory of the man who served his country on the supreme bench with so much honor to himself and value to the American people, and it seems to me that if the celebration be at our annual meeting we shall have a proper, full and sufficient celebration. Otherwise there will be an address here in Indianapolis, which the Indianapolis lawyers and a few others will attend; but it seems to me that will not be appropriate to the design intended. I understand that the original design will not be attained by either of these motions. Mr. Moses' design, and the American Bar Association agreed with him, was that there should be a speech or an

address in commemoration of John Marshall at every court house in the United States. That is quite a different thing. We are not proposing to do that, but we are proposing that this bar association should celebrate the one hundredth anniversary of John Marshall's accession to the chief justiceship by a special meeting on the fourth of February next. It seems to me that we can accomplish the purpose better by the plan suggested in the amendment.

MR. LEWIS C. WALKER: Mr. President, I wish to say one word. I do not think we ought to yield to the matter of sentiment. I think it is more than sentiment. I want to concur in the remarks of Judge Howard by saying what I believe to be true—that if this celebration is held on the fourth of February next, it will be simply a meeting of the Indianapolis bar practically, and that is not what we desire. As a gentleman on my right suggested, we can devote a half day or a day of our session to John Marshall's memory, and without trenching on what the executive committee may do, I think we will find it pleasant and profitable if it were to select some distinguished lawyer to prepare an address, and then let all who care to, contribute incidents and anecdotes of the life of John Marshall, and talk a whole day about him. It will not be very edifying for the lawyers of Indianapolis simply to get together out of sentiment on that day, but let us make John Marshall's day John Marshall's day without regard to the calendar, not a matter of sentiment, but one of celebration, and let it be replete with an elaborate and finished oration, if you please, and then with anecdotes and incidents from other members, and make it a state and not a local celebration. We will find it impossible to carry out to the full extent the wishes of the Chicago lawyer, because the bars of the state respectively will not meet. We have not bar associations all over the state, and they will not meet and celebrate on that day. Therefore, as nearly as we can, let us come together and make it an occasion for more coming together at our annual meeting, and I think we will be glad that we made the change. I suggest that we adopt

the views of Judge Howard, and to put it in the form of a motion, I move that the celebration be had at our next annual meeting.

GEORGE L. REINHARD: Mr. President, I am very heartily in favor of celebrating this day at the proper time, not in July or in June, but on the fourth of February. I believe that that is the most appropriate time, because it is the day set apart by the American Bar Association, and it is the day upon which the lawyers throughout this country expect to celebrate this day. Now, so far as having a good attendance is concerned, I believe that we will be as apt to have as good an attendance upon that occasion as we would in July or in August. It is said that there are no courts in session at this time of the year, and therefore a better attendance can be secured. If that is true, why are the lawyers throughout the state not here now? Why is the Indianapolis Bar Association not better represented upon this occasion than it is? I look around me here, and to my great surprise I see five or six members of the Indianapolis bar. Now, I am told there are four hundred lawyers in the city of Indianapolis, and if we get them out, no matter whether they are members of this association or not, we can have a very decent attendance. And by that time, I suppose, we will have a supreme bench of eleven, and if they attend, that would make four hundred and eleven, and it seems to me that would be a very good attendance for the occasion. In addition to that, my friend on the left tells me the legislature will be in session, one hundred and fifty more. I don't know how many of their members would be lawyers, but I suppose one-half; that would make an addition of seventy-five. Do you suppose we can get an attendance of that kind in July? Far from it. I believe that the celebration of John Marshall day in July would be like the play of Hamlet with Hamlet left out.

MR. ROBERT LOWRY: Mr. President, I think it would be well to bear in mind that we may overdo by having too many meetings in the course of a year. It is well to recollect, I think, that there was a former state bar association organized in Indianapolis. It was

in the days of the Hendrickses and McDonald and Baker and Hord, and their compeers. It existed but for a few years, and for the reason that its meetings were attended chiefly by the bar of Indianapolis, and because of indifference being thus engendered on the part of the local bar here, it ceased to exist. Now, although the legislature may be in session on the fourth of February, I think it is well to bear in mind also that during that month the courts are generally in session throughout the state, and that the members of the bar in the outside counties will most likely be then generally engaged in earning an honest penny at home, and that it is very doubtful as to whether they will be able to leave their business and come here at that time. To obviate the objection, sir, with reference to the day being passed over which has been denominated John Marshall day, it can be very distinctly understood that the bar of Indiana are mindful of the fact that that was the day on which John Marshall ascended to the bench of the supreme court of the United States, and have made ample provision for the celebration of that occasion by having it known that at the time of their annual meeting one day shall be devoted to that particular service. Now, I think that ought to obviate all objections in reference to there being any manifestation of indifference by passing over the day itself, or with reference to the propriety of having it upon a particular day in order to give additional prominence to the commemoration of the event. There was one other suggestion made, and that was by my friend, who is a member of the Huntington bar (Mr. Lesh), that the celebration of John Marshall's accession to the bench at the time of our annual meeting would displace the ordinary proceedings. I submit that that is not so. One day can be devoted to that purpose, and this notable circumstance will be made sufficiently conspicuous, and we will have ample time for the transaction of the other business of the association, by devoting one day to that purpose—the commemoration of that great event. I hope,

sir, in that view, that the amendment of Judge Howard will be adopted.

THE PRESIDENT: The motion of Mr. Williams was that the executive committee be directed to make suitable preparation for the celebration of John Marshall day on February 4, 1901. The amendment offered by Judge Howard is that the day to be fixed for the celebration be a day of the next annual session of the association. All those who are in favor of the amendment will signify it by saying "aye." Those opposed "no." I think the "noes" have it.

A division being called for, a rising vote resulted in the defeat of the amendment—"ayes" thirty-two, "noes" forty-four.

THE PRESIDENT: The amendment is lost. Are you ready for the question upon the original resolution? Those in favor of the original resolution will say "aye;" those opposed "no." The motion is adopted.

MR. WILLIAM L. TAYLOR: Now, Mr. Chairman, the question arises, since the fourth of February proposition has carried, whether or not it would not be a good idea to have the annual meeting at that time. Of course, being in Indianapolis, I do not feel that I ought to vote on the subject, and there are several other gentlemen here to whom it would be a matter of indifference. I want to make that suggestion, if any member desires to make a motion on it. I call the attention of the chair to the fact that that might be done. Now, with reference to what Judge Palmer has said, with all due deference to what has been said upon the proposition, it seems to me that somebody besides lawyers ought to know something about Judge Marshall. Lawyers, we assume, are all interested in the history and character of the great work of John Marshall. The people ought to know more about his life. I think there ought to be separate meetings, as far as possible, throughout the state, and that the people ought to be invited to attend those meetings. Somebody ought to be invited to make an address, not to lawyers. Let

the people understand that the meeting is not for lawyers, but let everybody be invited.

THE PRESIDENT: I might say, apropos to what has just been said, that it was the belief of the executive committee that this celebration of John Marshall day should partake of the character of a popular celebration. While under the auspices of the state bar association, that some man distinguished in the law and in letters also, some man of literary character and reputation, should deliver an address, and that it should be an occasion with respect to which, as regards the place of meeting and all its surroundings, the members of the bar would bring their families and the general public be invited to attend. It can be made, and I think ought to be made, an occasion of great interest to the general public, and there ought to be no difficulty in filling the largest house in Indianapolis with an intelligent audience, and if there are any members of this association who, by reason of their business, should be unable to be there, it would be their misfortune.

MR. CALEB S. DENNY: I observe from the by-laws that the question of the time of meeting of this association is left with the executive committee, so that I apprehend, if it were thought advisable by that committee that the next annual meeting of this association be held on the fourth and fifth days of February next, that committee can so order it.

THE PRESIDENT: Yes, there is no doubt about that.

MR. DENNY: I don't care to make any motion about it, but if it should be thought wise for this association to give an expression of its opinion for the guidance of the executive committee, it might be well to do so.

There being no motion made, the association proceeded to the next order of business.

THE PRESIDENT: Gentlemen, the program is completed, with the exception of the election of officers for the ensuing year. The first business in order will be nominations for the office of president.

MR. LEWIS C. WALKER: I wish to put in nomination for the office of president Judge Timothy E. Howard.

MR. TIMOTHY E. HOWARD: I am very much obliged, Mr. President, to Judge Walker, but I can not accept the office of president. I am too far away.

MR. WALKER: I desire to say that this is a place where we neither electioneer nor decline. We will not accept the withdrawal of Judge Howard.

A MEMBER: Mr. Chairman, I place in nomination Judge Hammond, of Lafayette.

MR. E. P. HAMMOND: I beg leave to withdraw my name.

THE PRESIDENT: I must say to both of you gentlemen that I am not vested with any power to accept your declinations.

MR. SAMUEL ASHBY: I nominate William A. Ketcham, of Indianapolis.

MR. ALLEN ZOLLARS: Mr. President, sometimes a good friend is put in a peculiar position. I appreciate the trouble about getting to Indianapolis. Indianapolis is considerably out of the world —hard to get to—and Judge Hammond is close to Indianapolis. He can run over here any day, and therefore I am in favor of excusing Judge Howard. I don't think the presidency ought to go to Indianapolis. Indianapolis has had three of the presidents since the organization of the association, and all of the meetings are here, and I should have a fear that if everything were given to Indianapolis it might hurt the association, and the outside people might lose interest in it; therefore, generally, I am in favor of passing it around. I need not speak of the qualifications of these men, because they are all qualified. I know the association can make no mistake in electing either one of them. But for the reasons I have stated, as against an Indianapolis president at the present time, and for the reason of the difficulty of Judge Howard getting down here, and that Judge Hammond lives close, I second his nomination.

THE PRESIDENT: Are there any other nominations? The secretary will prepare the ballots. I will appoint John Morris, of Fort Wayne, and Mr. Ulysses S. Lesh, of Huntington, as tellers.

MR. TIMOTHY E. HOWARD: Mr. President, it does not seem to me that that is necessary. The name of Judge Hammond has been suggested, and the reasons given why he should be chosen are very good. I am not a candidate, and I move, therefore, that his election be made unanimous.

THE PRESIDENT: There is another name in nomination. Mr. Ketcham has been put in nomination.

A MEMBER: Mr. President, I would suggest that the nomination of Mr. Ketcham has not been seconded, and if my point is well taken, I move that the secretary be instructed to cast the ballot of the association for the election of Judge Hammond as president.

THE PRESIDENT: As to the point of order, I shall be compelled to rule that I am not aware of any rule of parliamentary law requiring nominations to be seconded. Are there any other nominations?

MR. JOHN G. WILLIAMS: If it is necessary, I second the nomination of Mr. Ketcham.

The tellers collected and counted the votes, and the result was announced as follows:

THE PRESIDENT: Gentlemen, I will give you the result of the vote. The whole number of votes cast is eighty-five. Of these, Judge Hammond has received sixty, Mr. Ketcham fourteen, Judge Howard eleven. Judge Hammond is elected president.

It will be in order next, gentlemen, to elect a vice-president, then a secretary, and then a treasurer. Will you elect these separately?

A MEMBER: Separately.

THE PRESIDENT: Very well.

MR. NEWTON W. GILBERT: I nominate Mr. Ketcham for vice-president.

A MEMBER: I nominate Judge Zollars, of Fort Wayne, for vice-president.

MR. ALLEN ZOLLARS: No, I decline; I haven't time to attend to it.

THE SECRETARY: The vice-president has absolutely no duties at all.

MR. ZOLLARS: Then I don't want it; I do not want any such office at all. Mr. Ketcham has been nominated, and I move that his election be made unanimous.

THE PRESIDENT: It is moved and seconded that the secretary be directed to cast the ballot, one ballot, of this association for Mr. William A. Ketcham as vice-president. Those in favor of that motion signify it by saying "aye;" those opposed "no." The "ayes" have it, and Mr. Ketcham is unanimously elected vice-president of the association.

Nominations are in order for the office of secretary.

MR. CHARLES P. DRUMMOND: Mr. President, I desire to place in nomination Mr. Frederick Joss, of Indianapolis.

MR. JOHN B. COCKRUM: I nominate Merrill Moores for secretary.

The tellers collected the ballots, counted the votes, and announced the result to the president.

THE PRESIDENT: Gentlemen, I will give you the result of the ballot for secretary. The whole number of votes cast, eighty-two. Of these, Mr. Moores has received sixty-five, Mr. Joss seventeen. Mr. Moores is elected secretary.

It is next in order, gentlemen, to elect a treasurer.

MR. ORLANDO J. LOTZ: Mr. President, I put in nomination for treasurer of this association the present incumbent of that office.

MR. OLIVER H. BOGUE: I move that the secretary be instructed to cast the unanimous vote of this association for Mr. Theodore P. Davis.

The motion was adopted, and Mr. Davis was declared elected treasurer of the association for the ensuing year.

THE PRESIDENT: It is necessary next, gentlemen, to elect four members of the executive committee.

MR. ENOCH G. HOGATE: I nominate Judge Reinhard as one member of the committee.

MR. THEODORE P. DAVIS: I nominate Senator E. G. Hogate.

MR. JOHN B. COCKRUM: I nominate Mr. William P. Breen.

MR. ALLEN ZOLLARS: I nominate Judge Howard.

MR. MILLER: I move that the secretary be instructed to cast the ballot of the association for the four gentlemen named.

MR. WILLIAMS: I second that motion.

A MEMBER: I nominate Mr. John G. Williams.

MR. WILLIAMS: I decline.

MR. JOHN B. COCKRUM: I nominate C. C. Shirley, of Kokomo.

MR. SHIRLEY: I decline.

A MEMBER: I nominate Mr. W. H. H. Miller.

MR. MILLER: I decline.

THE PRESIDENT: Are there any other nominations? Now, gentlemen, how is it your wish to cast this ballot? Will you vote one at a time, or will you vote for four candidates, or will you vote for all and let the highest four be declared elected?

A MEMBER: Four.

THE PRESIDENT: That may be taken by consent, I presume.

MR. MILLER: I renew my motion. I move that the first four names read be declared the choice of the association for members of the executive committee, and Mr. Williams seconds the motion. Mr. Shirley has declined.

THE PRESIDENT: I took it that the nominations superseded the motion, and did not put that motion. Now, the motion is renewed, gentlemen, and it is that instead of taking a ballot, the secretary be directed to cast the unanimous ballot of the association for the first four gentlemen put in nomination. Those in favor of

that motion signify it by saying "aye;" those opposed "no." The "ayes" have it.

THE SECRETARY: Can the secretary cast the ballot on a divided vote?

THE PRESIDENT: I think he can, if he has the physical ability to do so. Gentlemen, the secretary makes the point of order as to whether he can act upon such a vote as that if not unanimous. I have overruled that point of order, and said to him that the majority of the convention controls on that, as upon all other questions. But the case is open for appeal.

Gentlemen, a motion was made yesterday directing the appointment of a committee of four to take in charge the business of taking such steps as might be desirable to procure the adoption of the pending constitutional amendments. That is a very important committee. It will have a great deal of work to do, and it would seem as though it ought not to be appointed without communicating with the gentlemen who are to be appointed and ascertaining whether they are willing to undertake the duties that are imposed upon them. I have not had the opportunity of having any such communication with the gentlemen whom I have in mind, and I ask, therefore, if it be agreeable to the convention, that the appointment of that committee be deferred until the banquet this evening.

A MEMBER: Consent.

THE PRESIDENT: I do not know, gentlemen, of any further business commanding the attention of the association. I think a motion to adjourn would be in order.

On motion, the meeting adjourned.

At the banquet the president announced the appointment of the following committee to take charge of the subject of promoting the adoption of the pending constitutional amendments:

1. Samuel M. Ralston.
2. Roscoe O. Hawkins.
3. Frank E. Gavin.
4. Cassius C. Shirley.

THE ANNUAL BAR DINNER

GIVEN AT THE BATES HOUSE, JULY 11, AT NINE O'CLOCK P. M.

SPEECHES.

Toastmaster, PRESIDENT ROBERT S. TAYLOR.

THE TOASTMASTER: It is said that lawyers are among the longest lived of men. I think that one reason for it is that they are careful to provide for their stomachs before they lay any burdens upon their brains, and equally glad when their stomach has been provided for to give some exercise to the brain.

I know that I speak the sentiment of every member of the association when I say that it has been a source of great pleasure to have with us the distinguished guest who sits at my right. [Applause.] We have been strengthened by his magnificent speech; we have been delighted and charmed by his society; we have always loved our sister state, Kentucky, but henceforth we shall love her the more for the sake of Senator Lindsay. [Great applause.]

Gentlemen, I ask you to rise and pledge a health to Senator Lindsay. [Cries of "Lindsay," "Lindsay," "Lindsay."]

I have the pleasure of introducing to you Senator Lindsay. [Applause.]

SENATOR LINDSAY'S REMARKS.

SENATOR LINDSAY: Mr. President and gentlemen of the Indiana Bar Association, I feel very deeply the kindly honor you have been pleased to pay me, and I assure you that I reciprocate your kindly feelings, and shall never forget this occasion so long as I am able to remember the pleasant episodes of life. [Applause.]

When I was a young fellow, reading the history of the great west, I used to wonder why it was that old George Rogers Clark faced the floods and the snows and the Indians and the British to capture and occupy what is now an Indiana town. Since I have been in Indianapolis I have been able to realize why it was that Clark and his compatriots made all those sacrifices. [Applause.] The truth is, the old soldier looked down the coming time with the eye of the seer, and he saw the great things that he was to bring about, and among the greatest things that he did bring about was the bar of the state of Indiana. [Applause.]

Since I have been here two days, enjoyed your genial companionship and partaken of your hospitality, I wonder why it is that I have lived as long as I have without ever coming to Indiana before [laughter and applause], and I want to say to the bar of Indiana now, that from this time to the end of time, so far as I am concerned, I shall never fail to avail myself of any decent pretext to come back to Indiana. [Applause.]

Now, my friends, I have had my day in court; I have made my speech. I have looked over this list, and I see that we are to have some very interesting pieces of information given us before the conclusion of this banquet, and I realize the fact that each one of the speakers expects that he shall have ample time to make his speech, and that I should go away from here having partially overcome the good impression that I at least hope I have made if I should take up the time that you have set apart to those gentlemen who are to speak to you to-night.

I see one of them is going to talk to you about "The Consent of the Governed." A very pertinent question, and a very interesting question. I want to make only one illustration, and when that is made I shall surrender the floor to the speaker whose name appears first upon the program.

"The consent of the governed" comes generally from the quality of the government. I am old enough to recollect a time when

thirteen states of this union, disarmed, crushed, came back into the union without their consent. Of the intelligent men south of the Ohio river in 1865, there was scarcely one out of five that consented to the re-establishment of the authority of the United States. A generation has passed away, and if there is a man in all the broad land south of the Ohio river who does not consent to the government of the United States to-day, I don't know who it is. [Great applause.]

We not only consent to stay with you, but if you have a seat in congress to bestow, or a seat in the senate of the United States to give away, or a supreme judgeship that you are hunting for some man to fill, a district judgeship or a district attorneyship, we consent not only to be governed by you, but to take either one of those places and help you to govern. [Laughter and applause.]

Now, I in conclusion extend to you my sincere thanks for the courtesies that you have extended to me. My visit here only strengthens the conviction that I have long entertained, that we are all Americans, that we are all brethren, and that free government is never destined to fade from the face of the earth, so far as the United States of America is concerned. [Great applause.]

TOAST—"NOT SO BAD AS PAINTED."

THE TOASTMASTER: Gentlemen, it is one of the arts of the intellectual cooks who prepared these toasts to endeavor to pique our curiosity by the use of such language as will set us to wondering what they mean. We are to have some remarks upon the subject of "Not so Bad as Painted." A man asks himself, in his mind, at once, "What is it that is not so bad as painted?" Is it the bench? the bar? the jury? or the town? [Laughter.] These have all been painted [laughter] at one time or another, and some of us have assisted in the decoration. [Laughter.] We are to have light on this subject from a gentleman who is himself an artist

[applause], and who always dips his brush in the rainbow. You will hear now from Major Charles L. Holstein. [Applause.]

RESPONSE.

MR. HOLSTEIN: Mr. Toastmaster and gentlemen: The melancholy days have come,—for the aftermath of banquets is speech-making.

"So comes a reckoning when the banquet's o'er,—
The dreadful reckoning, and men smile no more."

Whether the custom of post-prandial speechifying is a custom sometimes more honored in the breach than the observance is a question which is left to your charitable consideration after you have endured me.

It is written that Job was a patient man, but it has never been authoritatively stated that his patience was tested by an after-dinner speaker, and it is not recorded in any accepted history that he was compelled to listen to twice-told tales, or to the reiteration of jokes carved on the walls of Nineveh. [Laughter.]

Byron divided society into two mighty hordes—the bores and the bored. Now, I do not want to bore you, and being solicitous lest I should, I consulted an experienced friend, and he informed me that the art of banquet speech-making is embodied in three very simple rules, namely:

First. State some general proposition upon which your audience can agree with you.

Second. Illustrate it with an appropriate story.

Third. Be brief, and close with an apt quotation.

All of us being lawyers, and there being no clients present, I entertain a halting hope that there is somewhere in "the wreck of matter and the crush of worlds" a proposition upon which we can agree; that is to say, always provided that the agreement is confidential amongst ourselves, and not otherwise—it further being un-

derstood and agreed that the right of dissent and denial hereafter is expressly reserved.

Under the qualifications, limitations and reservations aforesaid, I humbly and respectfully submit for consultation the proposition that lawyers are not so bad as they are painted. Surely we can agree, at least for to-night, upon that proposition—

> "And do as adversaries do in law;
> Strive mightily, but eat and drink as friends."

As a rule, the lawyer does not fare overly well in literature or popular estimation. He has always been the *corpus delicti* of the caricaturist and the penny paragrapher. Even the gentle poets take their fling at him, and the playwright generally portrays him as a seedy fellow, invitingly holding up his coat tails for a summary kick, in the hope of an action on the case against the kickor for posterior damages. [Laughter.] In the scant vocabulary of the populace, the words "liar" and "lawyer" are convertible and synonymous.

O! the lawyer is not a handsome man as he is painted. Still, like Falstaff, he is not only witty himself, but he has been the cause of wit in other men.

Once upon a time, when the handsome Mephistopheles, *incog.*, was sojourning in Europe, Dame Martha, an admiring, curious and suspicious old lady, asked him if he wasn't a lawyer. He courteously replied, low bowing: "Madame, I am the Prince of Lawyers." [Laughter.]

Doctor Johnson, who was always considerate and polite, said at a dinner party: "Gentlemen, I do not like to speak ill of anybody behind his back, but I believe the gentleman who just left us is a lawyer." [Laughter.]

Peter the Great, during his visit to England, saw at Westminster Hall a lot of busy people in black gowns and white wigs. He in-

quired who they were, and, being told they were lawyers, exclaimed: "Lawyers! I have but two in my dominions, and I believe that I shall hang one of them the moment I get home." [Laughter.]

Jack Cade, when aspiring to the throne of England, promised some radical reformations, and Dick the butcher, one of his hot followers, suggested that the first necessary thing to do was to kill all the lawyers.

Ruskin, hearing that there were certain villages in America where everybody was civil, honest and substantially comfortable, said that they had unfair advantages, because, among other things, there were no lawyers there. [Laughter.]

Macklin, in a play, makes one of his actors say: "The law is a sort of hocus-pocus science, that smiles in your face while it picks your pocket; and the glorious uncertainty of it is of mair use to the professors than the justice of it."

A countryman between two lawyers, said Franklin, is like a fish between two cats.

The wits have, indeed, made merry with us. But there are two sides to every case. Look here, on this picture and on this:

There are no lawyers in China. [Applause.]

The world, it has been said, knows nothing of its greatest men. Be that as it may, it is certainly true that the world knows little of its great lawyers and the great things which they have done.

History is vibrant and resonant with the noise of drums and the blare of bugles, and the world, ravished by their sound and fury, has been and is heedless of its unpaid debt to our profession. The lawyer's pen is mightier than the soldier's sword. Everywhere, and at all times, and in every battle and skirmish, appreciating his courtesy and his courage, the greatest glory of the soldier is that at his best he has written in his rich red blood the fundamental principles of good government and liberty, forespoken and formulated by the lawyer.

This is a short night, but there is time enough to allude briefly to the lawyer in Anglo-Saxon history. After all, considering everything, the lawyer is not so bad as he is painted.

The lawyer built and made the common law, and the common law is the embodiment and enthronement of right reason.

Lawyers wrote and forced Magna Charta.

Lawyers wrote and signed the Declaration of Independence.

Lawyers wrote the constitution of the United States, and there is no greater glory than this. [Applause.]

So much, summarily, for the lawyer in Anglo-Saxon history, but hurriedly, in passing, I observe that the careful student will find that the modest, brave and unremembered lawyer has been a potent factor in the world's forward march, and in the evolution of mankind to better conditions.

With prophetic prevision I see statues of Liberty, for the enlightenment of the world, standing here and there on its surface. I do not see the pedestals. All I see is the transfiguration of John Marshall. [Applause.]

Heroism is possible to all, and heroism manifests itself in many shapes.

There were brave men before Agamemnon.

Every walk of life has its heroes, and in the history of heroes our profession is fully represented.

"Here I stand; I can not do otherwise; God help me," said Luther, at the Diet of Worms.

Patrick Henry, then a poor young country lawyer, speaking on his resolutions against the stamp act in the Virginia house of burgesses, was not intimidated by the frequent interrupting cries of "Treason," "Treason," but answered them with the challenge, "if this be treason, make the most of it;" and later on, in the Virginia convention of 1775, speaking in favor of the resolution "that the colony be immediately put in a state of defense," he closed with the consecrated words: "Is life so dear, or peace so sweet, as to be pur-

chased at the price of chains and slavery? Forbid it, Almighty God. I know not what course others may take, but as for me, give me liberty or give me death." [Applause.] Be still a moment and listen, and you will hear those immortal words still reverberating the whole world around. These inspired words were not born to die.

The Petition of Right immortalized Sir Edward Coke; and further, it is remembered of him that when the king censoriously sought to control his opinions, he replied with dignity: "Your Majesty, when the case happens, I shall do that which shall be fit for a judge to do."

Fifty-six is the number of the signers of the Declaration of Independence, and thirty-five of them were lawyers. They dared their fates, and, so far as they knew, in signing that immortal document they severally signed their death warrants. Thank God it happened otherwise. [Applause.]

I could multiply examples, but in this presence it is unnecessary. Knowing history, we know that the lawyer is not so bad as he is painted.

The Honorable Richard D. Hubbard, in an address before the Hartford bar, in memory of a dead lawyer whose name is now forgotten, incidentally speaking of our profession, said:

"Our work concerns the highest of all temporal interests, property, reputation, the peace of families, liberty, life, even, the foundations of society, the jurisprudence of the world, and, as a recent event has shown, the arbitrations and peace of nations. The world accepts the work, but forgets the workers. The waste hours of Lord Bacon and Sergeant Talfourd were devoted to letters, and each is infinitely better remembered for his mere literary diversions than for his whole long and laborious professional life work. The victory gained by the counsel of the seven bishops was worth infinitely more to the people of England than all the triumphs of the Crimean war. But one Lord Cardigan led a foolishly brilliant

charge against a Russian battery at Balaklava and became immortal. Who led the great charge of the seven great confessors of the English Church against the English crown at Westminster Hall? You must go to your books to answer. They were not on horseback. They wore gowns instead of epaulettes. The truth is, we are like the little insects that, in the unseen depths of the ocean, lay the foundations of the uprising land. In the end come the solid land, the olive and the vine, the habitations of men, the arts and industries of life, the havens of the sea and ships riding at anchor. But the busy toilers which laid the beams of a continent in a dreary waste are entombed in their work, and forgotten in their tombs. * * *

"We may justly console ourselves with the reflection that we belong to a profession which above all others shapes and fashions the institutions in which we live, and which, in the language of a great statesman, 'is as ancient as the magistracy, as noble as virtue, as necessary as justice;'—a profession, I venture to add, which is generous and fraternal above all others, and in which living merit is appreciated in its day, according to its deserts, and by none so quickly and so ungrudgingly as by those who are its professional contemporaries and competitors in the same field. We have our rivalries—who else has more?—but they seldom produce jealousies. We have our contentions—who else has so many?—but they seldom produce enmities. The old Saxons used to cover their fires on every hearth at the sound of the evening curfew. In like manner, but to a better purpose, we also cover at each nightfall the embers of each day's struggle and strife. We never defer our amnesties till after death, and have less occasion, therefore, than some others to deal in post-mortem bronzes and marbles. So much we may say without arrogance of ourselves—so much of our noble profession."

With assurance double sure, I submit for judgment the proposition that the lawyer is not so bad as he is painted. [Great applause.]

TOAST—"LEGAL SCRAPS."

THE TOASTMASTER: Gentlemen, the next sentiment on the program carries my mind back to some touching remembrances when I lived on "legal scraps," on the crumbs that fell from the larger legal tables, and out of which the beginner is expected to eke out a subsistence. I presume we have all had our experience on that diet. I recall, too, days in my life, after I had been beaten in a jury trial, when my office was littered with incomplete instructions to the jury, memoranda of evidence that did not count, all sorts of papers that had served no purpose and remained only as "legal scraps;" and I recall also in my life a few scraps with the court. [Laughter.]

Now, how this subject will appeal to the distinguished gentleman who is to interpret it for us I can not tell, but I know it will be full of meaning. I call upon Mr. Otis L. Ballou to respond.

RESPONSE.

In legal literature, legal publications of every kind, in practice of the law, and the action of judges, you find scraps.

As at every well laid table made by the chef or connoisseur of the culinary art you find scraps remaining at the end of the repast, so at every well filled legal table the lawyer encounters all sorts of legal publications, papers, magazines and books, and with fair degree of discrimination you realize that the book agent, in your busy moments, in the most persistent manner, has palmed off on you at an enormous cost, considering its real value, a legal scrap, or practically a worthless book, else taken your subscription for a legal periodical that on its delivery each week or month reminds you that you have been thoroughly scrapped—the fat fried out of you—and wish for the time that you could meet that emissary of evil, that you might let your indignation escape in a natural and earnest ex-

pression of disgust, else exercise the muscular part of your anatomy in his forceful expulsion from your office door. It may be in the depths of humiliation, the lawyer must confess that he is the most thoroughly humbugged person living, even in the purchase of the books for his use in his law office.

The multiplicity of legal publications require at his hands the most careful discrimination in making selection that is useful to him, yet he submits again and again to imposition rather than run the risk of a single loss of fact or legal proposition that is likely to make success. This is certainly true of the young lawyer, and the one of years and practice can well testify, after the trial had and experience obtained, that he can go to the shelves of his library and from his purchased assortment take therefrom and reduce to the flames legal scraps—papers and books that have the semblance of legal publications, but in fact useless in his profession. The ambition born for the authorship of some book of the law has produced the evidence in abundance to prove that legal scraps are written, published and sold, to some extent at least, before their worthlessness by perusal has been discovered. Yet, true as this case is, the lawyer finds that judges of the courts of high resort append their names to such publications, and with their recommendation sales are made to the busy lawyer [applause], and we may believe that the action of judges is often taken without the knowledge of such publications as would enable them to discern between the truly useful book and a legal scrap.

The author himself, in many cases, is made to realize, by just and fair criticism, or experience in small sales of his publications, that his work is only a trifle of what some one else has written more thoroughly and learnedly—that his work is a fragment, a detached, incomplete portion, and, in the words of DeQuincy, will say, "I have no material, not even a scrap."

As annoying, costly and worthless as these unconnected extracts of the law may be to the active lawyer, how much more so is the re-

sult in practice where a *nisi prius* judge takes such an extract as authority, and oftentimes decides the cause against the thoroughly informed and experienced lawyer, whose full knowledge of the law teaches him that the case is ignorantly and erroneously decided. Well, his client may lose his cause, but the lawyer can, as a last resort, damn the judge when he reaches the street, or in the secret recesses of his office. If he can not appeal his cause for any reason, he can at least on the trial lose sight of the fact that he is a lawyer, and that a legal battle is on, and stoop among the detached portions of the law and enter into a legal fusillade, modernly known as a scrap, and scrap it out. That is *dernier resort,* and only permissible because some judge occupies the bench whose legal knowledge is made from the cracklings and scraps of the law—whose learning never felt the strengthening influence of the fat of a legal mind. The real exhibition, however, of the want of value of scraps of the law is made when a lawyer briefs a cause in the courts of last resort, and, in the citation of authorities, relies on the use of legal scraps and flings them at the judges a page full at a time, and in fact says to them, "Read these, and see if you can find something applicable to the case." They are detached, incomplete portions of the law; put them together if you can; round them out in the symmetrical form of the law, when, in its fullness, it means something, for I can't do it. I never knew the law, only parts of it at a time. Of course, the court will do that, or one's client must suffer the consequences of the employment of an incomplete lawyer—a legal scrap. The court will, of course, dispose of the case; yet methinks I hear the judges say, "We detest such lawyers."

So the strength, dignity and value of the law and the thorough knowledge of it lies in the nobility and usefulness of the learned and true lawyer. It is the fat of the law that makes lawyers and judges. It is the pith and marrow that we need in legal publications and books, and the skinny portion scraped from the bone is the bane of legal worth.

This is true of the publisher and the periodical—the author and the book—the lawyer and his work—the judge and his decision.

Every good and learned lawyer counts at its full worth a useful legal publication and a helpful law book, a learned and complete judge, but he soon learns to despise a legal scrap. [Applause.]

TOAST—"HOW TO REDUCE THE SURPLUS POPULATION."

THE TOASTMASTER: Gentlemen, the next toast on the program, as you have probably seen, is "How to Reduce the Surplus Population." It is proper to say, in explanation, that this toast is one which was left over at the last meeeting of the State Medical Society. [Laughter.]

The doctors have been working at this problem until they have given it up and turned it over to the lawyers. We expected to hear to-night an interesting discussion on this question from Mr. Lincoln Dixon, but I am sorry to have to report that a letter received from him this afternoon advises us of his inability to be here, so that "How to Reduce the Surplus Population" will still remain an unanswered problem.

TOAST—"THE CONSENT OF THE GOVERNED."

We are to hear next upon "The Consent of the Governed." As I said before, I have not been enlightened by the committee as to who the "governed" are, or what sort of "consent" it is that is to be obtained. A good many of us have been present at an interesting ceremony where the "consent of the governed" becomes a very serious and delicate matter. It was, in times past, the rule to exact from one of the parties to the ceremony a promise to love, honor and obey. There has been a disposition of late to rebel at the latter part of that promise, and it becomes a very interesting and sometimes delicate question to know whether a man can obtain the consent of the governed, and a very important question to him that he shall.

It may be that we are to hear upon this question a discussion which will take a wider range. If that should be so, I am authorized by Judge Baker to say, if in that part of the government which he administers he had to wait for the "consent of the governed," he would not do any business at all. [Applause and laughter.]

Now we will hear a more philosophic and thorough discussion of this subject from Mr. C. C. Shirley, of Kokomo.

RESPONSE.

MR. SHIRLEY: Mr. Toastmaster and gentlemen: After listening to the brief but very wise and eloquent words of our guest of honor upon the subject assigned to me this evening, I regret exceedingly that I can not abdicate in his favor my position on this program, to the end that you might have this subject interpreted and amplified by the luminous mind of the distinguished senator from Kentucky. [Applause.]

I will say further, Mr. Toastmaster, that, like yourself, I have been furnished by the committee on program, who are responsible for the subject assigned to me, with no plans or detail drawings, nor explanatory notes, and I am, therefore, in total ignorance as to the committee's conception of this theme. You will pardon me, therefore, if I entirely fail to grasp the idea.

To the mind of different individuals the thought suggested is various. It is full of possibilities, I imagine, for the pen of the political essayist or the sociologist, but I think you must agree with me that as a field for after-dinner exploitation it has its disadvantages and its limitations.

However, I am very generously left entirely free by the committee to treat the question according to my own fancy, with perhaps three very simple and reasonable conditions. In the first place, I am told by your genial secretary that I must be brief. Secondly, that off-hand extemporaneous eloquence is desirable.

And lastly, that I am expected to be funny. [Laughter.] Now all this, gentlemen, is very easy if I may except the second stipulation, and I do not know that I could have offered any serious or valid objection to that, if I had been given more time; for in my limited experience as a post-prandial orator I have always observed that it takes a good deal more time to prepare an extemporaneous address than it does any other kind. [Laughter.] Now, I only learned of the subject that I was expected to talk about, I think, some four days ago, and while that was entirely sufficient notice to have patched up a cut-and-dried affair, I very respectfully submit that it was unfair in the committee to expect me to prepare an extemporaneous address in four days.

I have said that the subject is hampered by limitations. I would, perhaps, be more accurate in saying that the idea sought to be conveyed, the time and occasion considered, is rather vague. Though the phrase itself is just now a trifle hackneyed, to undertake its definition, even any of its phases, is to provoke instant discord and possibly precipitate a riot. [Laughter.] To one mind it suggests the spirit of the Declaration of Independence, and so involves the soundest constitutional learning and the loftiest statesmanship; and to another it appears, in its later application, merely as the trick of political demagogery. For obvious reasons, therefore, I can not discuss the question here in either its legal or its political aspect, because I can not violate the proprieties of the occasion by talking politics, and as to the law—I am firmly resolved that, whatever else I do, I will not, in this presence, talk shop. [Laughter.]

To my way of thinking, the very last questions that should ever be permitted to intrude themselves upon the purely social enjoyment of a company of lawyers and politicians are law and politics. Of course, I use the term law in its narrow technical sense, and the term politics in its partisan sense. I know you are all resenting

the assumption that you are politicians, but you are every one of you guilty, nevertheless, to greater or less degree.

Now, I am going to make at least one relevant observation before I sit down—I am perfectly aware of the fact that up to this time I have not touched the question. [Laughter.] My point is this: The most important, the most vital, the most practical, the most universal thought suggested for our consideration by this text is that we individually owe to our common country a free and unqualified and unreserved consent to be governed, in the best sense of that word, according to the plan of representative republican government as ordained and established by the fathers. [Applause.] The obligation is reciprocal. "The consent of the governed" means not merely submission to the power of government, not only passive recognition of the justice of its principles; it means more than obedience to its laws and respect for its authority, though it necessarily includes both these cardinal political virtues. It implies participation in the affairs of government. It implies a willing, cheerful and loyal support of our country's institutions and laws. It implies, in the American sense, an intelligent comprehension of the system, the plan, the scheme of civil liberty; and so, in consenting to be governed, in this purer and higher sense, the citizen becomes the patriot, and worthily wears the crown of dignity and civic righteousness which is the birthright of every American citizen. [Applause.]

TOAST—"SILENT BATTLES."

THE TOASTMASTER: We are to hear next some wise observations upon the subject of "Silent Battles." There is novelty in this in the lives of lawyers. His battles are not usually silent, but wordy. He has two kinds of battles—his battles with his adversaries in court, and his battles with his creditors outside [laughter and applause], and neither of them are ordinarily silent; but there are silent battles of which we shall hear from Mr. George E. Clarke.

RESPONSE.

MR. CLARKE: Mr. Toastmaster, the soldier is as old as the human race. The combative quality in man has never lacked a representative. Wherever rivalry has been engendered there was battle. Wherever ambition has had birth, there you find the soldier. The havoc which war has committed there is no imagination great enough to estimate. Could all the treasures which war has destroyed be restored, the world would be filled with gladness and delicious melody. War has swept away the records of peoples. It has cooked the victuals of its camps by the blaze of libraries. It has made cartridges out of the manuscripts of Livy. It has defaced and demolished some of the most wondrous works of sculptured beauty, such as imagination dreams but once and never dreams again. Music, architecture, painting, poetry, the creation of man in his noblest genius and wisdom, have experienced the wreck and ruin of war. The dimples of childhood, the wrinkles of the aged, the virtue of women, the very altars of God's temples, have been prostituted in the wild delirium of war. Could villages, towns, cities, districts be shown to us to-night, in one awful vision, as war has dealt with them, as ravaged, sacked, burned, devastated, it would seem as if hell were opened with its anarchy of flames, and the heavens were darkened with the smoke of the bottomless pit. And yet this is one of the means by which popular rights have been established. There are other means. There is another agency. The world has progressed by appeals to reason and to judgment, as well as by challenge to arms. In the intellectual arena have battles been fought and won. The legal profession has contributed to the commonwealth of man. In the forum, on the bench and in the cabinet have silent battles been fought and victories achieved compared with which Marathon and Bannockburn will lose their luster. Runnymede is greater than Waterloo. Gladstone was greater than Nelson. Towering above all the military heroes of his day was the

American lawyer, Abraham Lincoln. [Applause.] Associated with the sword are memories of despotic power, martial rule. Identified with the lawyer are the customs and charters, institutions and laws which have given the greatest measure of liberty to the citizen and guaranteed most sacred rights to the subject. This spirit is around us to-day. It has touched the shores of Cuba and the Philippines. It revealed itself in the lawyers of the Paris peace commission. It is manifested in the liberal policy of our lawyer president, William McKinley. [Applause.] It was not the fleets of Attica, nor the valor of her troops, but the genius of her lawyers that directed the energies of her people. Pericles made possible Grecian prowess. Her twelve tables, not her soldiers, made Rome the mistress of the world. Justinian's pandects, not the defeat of the Moslem hordes, preserved the continent of Europe. It was not the Norman conqueror, but the common law which evolved constitutional freedom out of chaos. After the sleep of a thousand years, liberty awoke at the touch of Alfred the Law-maker. The Code Napoleon partially mitigates the infamy of the injuries its author inflicted on mankind. Part of the coronation oath of every English monarch, from John to Victoria, was formulated over seven centuries ago by a lawyer priest, Langton, in the glorious text of Magna Charta. Call the least of the world's greatest lawyers, and you will name men who were as Atlases, on whose mighty shoulders have rested the peace, prosperity and security of mankind; immortal gladiators in the silent, bloodless battles of the world's progress. See the superb Chatham answering Grenville upon the right to tax the colonies. Listen to the argument of Canning and Brougham, the *Coeur de Lion* and the Saladin of the senate. Who can doubt the influence on our fortunes in America of the burning satire and irony of Barre and the profound reasoning of Burke? What of O'Connell, whose race has written its names among the matchless list of military heroes? In his day the convulsion of the French Revolution was still agitating Europe.

The cannons of Bonaparte boomed from the Danube to the Nile. Mingled with the din of conquest were the shouts of the people and the crash of thrones. War on the sea was not less fierce than war on the land. Britain was sweeping the ocean with her fleets. Admiral Nelson was tiring fame with the rapid succession of his victories. While these terrible men shone amidst the gloomy majesty of war, O'Connell, too, had visions of renown, but they arose from the "silent battles" of humanity and peace. [Applause.]

The contests of the early colonists were on issues of law. History tells us of the fighting men of that day. Song and story have thrown around many of them the glamour of romance. Whittier and Longfellow have portrayed them in heroic verse. Bryant emphasizes the daring of Marion's men. McMaster, with poetic fire, tells us of

> "The old Continentals,
> In their ragged regimentals,
> Yielding not."

But it was a lawyers' war. It is true they had fought the savage, whose oriflamme was the eagle's feather or heron's crest. They had fought arrogant Englishmen. They had struggled with those who bore the Bourbon banner of the *fleur de lis*. Too often did they turn against one another. But their rights were taught them by men of the legal profession. The ultimate issue was whether the barons had assembled in vain; whether John Hampden, on the plains of Chalgrove, had died in vain; whether the common law should be silenced forever. It was a legal question. It was a question whether Magna Charta, Habeas Corpus and the Bill of Rights, the rich inheritance of the past, should be reasserted in the Declaration of Independence. [Applause.] This was the question to which Patrick Henry addressed himself. He was the prophet of the people's conscience, the poet of the noblest impulses. He caused them to rise, august and majestic. He called on them to assume their might. He taught them the strength that slumbered

in their breasts. His language was shot forth as lightning, as beautiful and as fatal. He was not of the gladsome fancy which gathers flowers and wears a garland. He was of the impetuous temper which rises upon the storm and plays among the clouds. Liberty was the passion of his soul, the devotion of his life. Mighty in his eloquence, he was mightier in his love of country. Who was it that impressed upon the people their rights and caused them to rise? Was it not the lawyer, Patrick Henry? [Applause.] And who wrote the Declaration of Independence? Was it not the greatest political genius that ever sat in the presidential chair, the lawyer, Thomas Jefferson? [Applause.] And if this constitution of ours is the great instrument eulogists say it is, if it is like one of those rocking stones reared by the Druids, which, as Winthrop beautifully says, the touch of a child might vibrate to its center, yet the might of an army could not move from its place, let me tell you that it was the genius and wisdom of lawyers that made that remarkable document. But it was not accepted immediately. There was a division of opinion. Who prepared the people to receive it? Who enlightened them as to its beauties and its promise? Was it not the lawyer, Alexander Hamilton? And if the painting of the Sistine Chapel alone speaks for Michael Angelo, to the lawyer Alexander Hamilton alone are we indebted for this country's financial policy. [Applause.] Great men had we in those days. If a special providence gave us a military leader of unusual qualities, and fitted to an exceptional crisis, it was another manifestation of the same power that, when a more novel system of government was to be tried, the chief justice of the United States was to be John Marshall. Marshall's services have left deeper imprints upon our governmental system than any military hero. The supreme court of the United States has made this country, and John Marshall made the supreme court. He was the final arbiter between the great contending parties of his day. He, with Jefferson on one side and Hamilton on the other, won silent battles. What would

have happened if Marshall had declared Hamilton's financial policy unconstitutional? In that case, what would have become of the great doctrine of protection? What possibility of a national solvency would have survived such a decision? But that constitution would not have been ratified had it not been for the able papers of men, chief of whom was Hamilton. Sixty-three of the eighty-five essays in the Federalist were written by him. They were not written for fame or money, but from patriotism. They were to enlighten the minds of the people and prepare them for the reception of the constitution. But his public services did not stop there. To him is also absolutely the glory of relieving the national embarrassments. Our financial system was the work of one man. The exquisite periods of famous orators may linger for awhile and go like the memory of some lost chord, but his discussion of public themes will abide with us forever.

And when this great constitution was accepted and this government of ours moved in its onward progress, who was its greatest defender when the nullifiers of South Carolina menaced it? Was it not the lawyer, Webster? And thirty years afterwards, when his bones lay mouldering at Marshfield, and nullification once more raised its front, was it not his ignited logic, warm again in the minds of the people, that roused them like a mighty bugle blast until they went on to victory, and behind the flag there was neither master nor slave? [Applause.]

What is a great navy, what is a great army, compared with that remarkable character, the Springfield lawyer—the first of our martyred presidents, the greatest of our mighty dead? Around him were Seward and Chase. In the halls of congress was the great Charles Sumner. All glory, all honor to the men of arms in our union. The American soldier has been the ablest and the bravest that ever joined in the shock of battle, and from the moment Paul Revere caught the flash of the signal lanterns in the belfry of the Old North Church and rode his ride, from that mo-

ment down to this we assert that the American soldier is without a peer in the annals of war; but a greater measure of indebtedness is due to the legal profession. If the students of the old world go to the galleries of Florence to learn literature and art in the presence of sculptured heroes, so will the historian learn of the greatest battles of this country in reading the lives of Hamilton and of Jefferson, of Lincoln and of Marshall. It is to the legal profession that this country is indebted for its past achievements, its present power and majesty, and its future hope and greatness. [Applause.]

TOAST—"NOTWITHSTANDING THE GENERAL VERDICT."

THE TOASTMASTER: Gentlemen, "Notwithstanding the General Verdict." Those words tell the story of desperation to a lawyer. When his case gets to that point, it is bad indeed. It is the last ditch of his fight. A very pertinent criticism strikes me here. It is that it depends on which side he is. I confess, gentlemen, that I was thinking of the lawyer that is contending for judgment "notwithstanding the general verdict." We will hear upon this subject from Mr. Joseph H. Shea.

I am told that I have made a mistake, and that Mr. Shea is not here, and I hope that Mr. Burke will respond to this toast.

RESPONSE.

MR. BURKE: Mr. Toastmaster and gentlemen of the bar association, notwithstanding this general verdict, I am wholly unprepared to render judgment on this at all. I have not thought about it. I don't know whether it is guilty or not guilty, five thousand dollars, or for the defendant. But I concur in the general verdict, and accept, on behalf of the association, the compliments, the bouquets and flowers that have been thrown at us by the eloquent and distinguished member of the bar from the county of St. Joe. [Applause.] The general verdict of the populace upon the legal

profession is wholly at variance with the toast responded to by the gentleman that I have referred to. We have troubles enough of our own, we have troubles enough in our profession, we have troubles enough with our particular and special clients not to be overwhelmed with the general verdict of the people on the legal profession in particular. [Applause.] It is a satisfaction, however, after a year of litigation, some legal successes, frequent legal disappointments, financial compensations and fees gone glimmering like a schoolboy's dream, to assemble on an occasion of this kind, hear the testimony, listen to the argument, and reach the conclusion that we are now, ever have been and always will be "the whole thing." [Laughter and great applause.]

TOAST—"NOTICE TO QUIT."

THE TOASTMASTER: We have now arrived at a most unwelcome toast. It seems a pity that upon an occasion so delightful as this that there ever should be served "a notice to quit." But we have arrived at a point at which the committee have deemed it proper that that notice should be served. It will be expressed to us, I doubt not, in considerate and gentle language by Mr. Charles P. Drummond.

RESPONSE.

MR. DRUMMOND: Mr. Toastmaster and gentlemen of the association: I was notified some few weeks ago that I might select my own subject upon which to speak at this banquet. I selected that subject, but through some misunderstanding between the committee and myself I received notice just a day or two ago that I would be expected to speak upon the question of "Notice to Quit."

I had a very beautiful and very fine oration prepared. I, too, had searched history. I, too, had found that Patrick Henry was a patriot and a lawyer. I, too, had discovered that John Pym and Sir Edward Coke made Charles the First surrender the Petition of

Right and the writ of habeas corpus. I had discovered, too, that, when the clouds of civil war grew dense and dark, a long, lean country lawyer clasped his hands behind his back, lifted his God-like head above the din, and with his cool, unperturbed lawyer intellect saved a republic. That, gentlemen, was a part of my speech. [Laughter and applause.] I had other choice passages, and, as Mr. Burke has well said, I had built up a superstructure which left no place for others to build. We were the whole thing. But I had to sit here and hear my speech delivered better by my friend, the first speaker, and improved upon by my eloquent friend Clarke, from St. Joe, and still I had courage; but when Mr. Burke got up and served notice on me to quit, I accepted it, and I refuse positively, Mr. Toastmaster, to deliver my eloquent speech, and I refuse to talk upon this subject of "notice to quit," because I believe that there are lurking potentialities in the subject. [Laughter and applause.] I am afraid that the committee that apportioned this notice to me is republican in politics. [Laughter.] There are other reasons why I refuse to speak upon it; but the most serious reason why I refuse to speak upon it is that it seems to me to mean one of two things: Either that I am to quit now and abandon the field and save my campaign expenses, or else that my good friend, Mr. Taylor, shall move out on the seventh day of November. And for all these grave potential reasons, and for the most potent reason that the gentlemen, with the characteristic egotism of lawyers, all thought of themselves, including myself, and framed their speeches all alike. And there is another reason why I fail to deliver my speech. I intended to tell you something about the glory of military heroism; I intended to tell you how men became heroes under the crash and hiss of shells; I intended to tell you how good men and women brought flowers and laid them upon their tombs as sweet and tender tributes to their memory; I intended to point out to you that mothers and sires told their big-eyed children how this man lived for his country and that one died that his country

might live. I intended to tell you [laughter] of Thomas Erskine and John Marshall, and I further intended to tell you, gentlemen, that neither in drama nor fiction, granite, iron or bronze, appears the heroic form of a lawyer. [Laughter.]

I give you these excerpts, gentlemen, to show you what you have missed by this peremptory order of the committee simply to talk about "The General Verdict," "Notwithstanding the General Verdict," and subjects of that kind. My friend Burke has taken the bench and entered up a peremptory restraining order against me, and served notice on me to quit. I think he did it to relieve me of a responsibility, for which I am duly thankful. [Applause.]

THE TOASTMASTER: This brings the delightful exercises of this meeting of our association to a close. I shall add nothing to what has been said, except to congratulate you one and all upon the success of the meeting, and to hope that it may be a stimulant to you to renew your devotion to the State Bar Association of Indiana. [Applause.]

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Funk, George W.....Logansport.
Funk, Walter A.....South Bend.
Gavin, Frank E.....Indianapolis.
Gifford, George H.....Tipton.
Gilbert, Newton W.....Angola.
Gilchrist, Alexander.....Evansville.
Given, Noah S.....Lawrenceburg.
Gough, Edward.....Boonville.
Gould, John H.....Delphi.
Griffith, Francis Marion.....Vevay.
Griffiths, John L.....Indianapolis.
Grubbs, George W.....Martinsville.
Hackney, Leonard J.....Indianapolis.
Hadley, Cassius C.....Indianapolis.
Hadley, John V.....Danville.
Hamill, Samuel R.....Terre Haute.
Hammond, Edwin P.....Lafayette.
Hanna, Robert B.....Fort Wayne.
Harper, James B.....Fort Wayne.
Harlan, Levi P.....Indianapolis.
Harris, Addison C. (Vienna, Austria).....Indianapolis.
Harris, Lucian.....Vevay.
Harrison, Benjamin.....Indianapolis.
Hartford, Richard H.....Portland.
Harvey, George C.....Danville.
Harvey, Lawson M.....Indianapolis.
Hatch, Aretas W.....Indianapolis.
Hawkins, Roscoe O.....Indianapolis.
Haynes, Sumner W.....Portland.
Hays, Silas A.....Greencastle.
Headington, John W.....Portland.
Heaton, Owen N.....Fort Wayne.
Hench, Samuel M.....Fort Wayne.
Henderson, Jacob D.....South Bend.
Henley, William J.....Rushville.
Henry, David W.....Terre Haute.
Herod, William Pirtle.....Indianapolis.
Hindman, Jay A.....Hartford City.
Hogate Enoch G.....Danville.
Holloway, Fred E.....Anderson.
Holstein, Charles L.....Indianapolis.
Hord, Kendall M.....Shelbyville.
Hottel, Walter E.....Bloomington.
Hough, William R.....Greenfield.

Howard, Timothy E.....South Bend.
Ibach, Joseph G.....Hammond.
Iglehart, John E.....Evansville.
Jackson, Francis M.....South Bend.
Jackson, Richard A.....Richmond.
James, Fleura F.....Newport.
Jameson, Ovid B.....Indianapolis.
Jewett, Charles L.....New Albany.
Johnston, William R.....Lawrenceburg.
Jordan, James H.....Martinsville.
Joss, Frederick A.....Indianapolis.
Kane, Ralph Kent.....Noblesville.
Kappes, William P.....Indianapolis.
Keegan, Hugh G.....Fort Wayne.
Kelley, Frank A.....Terre Haute.
Kelly, Daniel E.....Valparaiso.
Kern, John W.....Indianapolis.
Ketcham, William A.....Indianapolis.
Kirkpatrick, Lex J.....Kokomo.
Koons, George H.....Muncie.
Kraus, Milton.....Peru.
LaFollette, Jesse J. M.....Indianapolis.
Lamb, John E.....Terre Haute.
Lambert, Francis E.....South Bend.
Leonard, Elmer.....Fort Wayne.
Leonard, Wilmer.....Fort Wayne.
Lesh, Ulysses S.....Huntington.
Lewis, Henry C.....Greencastle.
Lockwood, Virgil H.....Indianapolis.
Logsdon, Hiram M.....Evansville.
Long, Jesse R.....Muncie.
Louden, John H.....Bloomington.
Louden, Theodore J.....Bloomington.
Lotz, Orlando J.....Muncie.
Lowry, Robert.....Fort Wayne.
Lutz, Clark J.....Decatur.
MacKibbin, Stuart.....South Bend.
Magee, Rufus.....Logansport.
Maier, Peter.....Evansville.
Marsh, Albert O.....Winchester.
Marsh, Ephraim.....Greenfield.
Marshall, Buena V.....Terre Haute.
Martin, William H.....Bedford.
Martindale, Charles.....Indianapolis.
Mathias, Henry H.....Greencastle.
Matson, Frederick E.....Indianapolis.

Mattison, Hamilton A.....Evansville.
McAdams, Charles B.....Williamsport.
McBride, Robert W.....Indianapolis.
McCabe, Charles M.....Covington.
McCullough, James E.....Indianapolis.
McGriff, Emerson E.....Portland.
McMaster, John L.....Indianapolis.
McNutt, John C.....Martinsville.
Menzies, Gustavus V.....Mount Vernon.
Miller, Charles W.....Goshen.
Miller, John H.....Princeton.
Miller, William H. H.....Indianapolis.
Mitchell, James L.....Indianapolis.
Moffett, William W.....Bloomfield.
Monks, Leander J.....Winchester.
Montgomery, Oscar H.....Seymour.
Moores, Charles W.....Indianapolis.
Moores, Merrill.....Indianapolis.
Moran, Daniel J.....Hammond.
Morgan, Henry C.....Huntington.
Morris, John, Jr.....Fort Wayne.
Morris, Nathan.....Indianapolis.
Morris, Samuel L.....Fort Wayne.
Morrison, Frank W.....Indianapolis.
Morrison, Harry C.....Shelbyville.
Morrison, James F.....Kokomo.
Morrison, James W.....Frankfort.
Mount, Walter W.....Tipton.
Myers, David A.....Greensburg.
Myers, Quincy A.....Logansport.
Nash, Leroy B.....Tipton.
Neal, John F.....Noblesville.
Nelson, John C.....Logansport.
New, Willard.....Vernon.
Newberger, Louis.....Indianapolis.
Newby, Leonidas P.....Knightstown.
Noel, James W.....Indianapolis.
Nye, Mortimer.....Laporte.
O'Hara, John W.....Peru.
Overton, William C.....Kokomo.
Palmer, George C.....Monticello.
Palmer, Truman F.....Monticello.
Parker, Samuel.....Plymouth.
Paulus, Henry J.....Marion.
Paxton, Thomas R.....Princeton.
Penfield, Wm. L. (Department of State, Washington, D. C.) Auburn.

Perkins, Lafayette ..... Indianapolis.
Peterson, John B ..... Crown Point.
Pettit, Henry C ..... Wabash.
Pickens, Samuel O ..... Indianapolis.
Pickens, William A ..... Indianapolis.
Piety, James E ..... Terre Haute.
Piety, John O ..... Terre Haute.
Pleasants, George S ..... Vevay.
Posey, Frank B ..... Evansville.
Powers, Frank M ..... Angola.
Proctor, Richard H ..... Tipton.
Purdum, William C ..... Kokomo.
Rabb, Albert ..... Indianapolis.
Ralston, Samuel M ..... Lebanon.
Reardon, Edward D ..... Anderson.
Reeves, Jesse S ..... Richmond.
Reinhard, Francis J ..... Indianapolis.
Reinhard, George L ..... Bloomington.
Reiter, Virgil S ..... Hammond.
Remy, Charles F ..... Columbus.
Renner, Charles G ..... Martinsville.
Richardson, Edward P ..... Petersburg.
Richardson, Robert D ..... Evansville.
Ritter, Eli F ..... Indianapolis.
Robinson, Woodfin D ..... Princeton.
Roby, Frank S ..... Auburn.
Rogers, William P ..... Bloomington.
Rohbach, James A ..... Indianapolis.
Rose, James E ..... Auburn.
Rose, James H ..... Auburn.
Ross, George E ..... Logansport.
Ross, Nathan O ..... Logansport.
Royse, Lemuel W ..... Warsaw.
Rupe, John L ..... Richmond.
Sansberry, James W ..... Anderson.
Shambaugh, William H ..... Fort Wayne.
Sharpe, Arthur L ..... Bluffton.
Shea, Joseph H ..... Scottsburg.
Sheridan, Harry C ..... Frankfort.
Shirley, Cassius C ..... Kokomo.
Shirley, William S ..... Martinsville.
Shively, Charles E ..... Richmond.
Shively, Dudley M ..... South Bend.
Shively, Harvey B ..... Wabash.
Shutts, Frank B ..... Aurora.
Simmons, Abram ..... Bluffton.

Simms, Dan W.....Lafayette.
Smith, Alonzo G.....Indianapolis.
Smith, Charles W.....Indianapolis.
Smith, Horace E.....Indianapolis.
Smith, John M.....Portland.
Smith, William C.....Delphi.
Spencer, Charles C.....Monticello.
Spencer, John W.....Evansville.
Spencer, Maurice L.....Huntington.
Stannard, Melchert Z.....Jeffersonville.
Stansbury, Ele.....Williamsport.
Stansifer, Simeon.....Columbus.
Stanton, Ambrose P.....Indianapolis.
Starr, Harry C.....Richmond.
Stitt, Thomas L.....Wabash.
Storen, Mark.....Scottsburg.
Storms, Daniel E.....Lafayette.
Stotsenberg, Evan B.....New Albany.
Strong, Ephraim K.....Columbia City.
Stuart, William V.....Lafayette.
Sulzer, Marcus R.....Madison.
Swan, Elbert M.....Rockport.
Tandy, Carroll S.....Vevay.
Taylor, Arthur H.....Petersburg.
Taylor, David T.....Portland.
Taylor, Edwin.....Evansville.
Taylor, Harold.....Indianapolis.
Taylor, Robert S.....Fort Wayne.
Taylor, William L.....Indianapolis.
Teter, Hiram.....Indianapolis.
Thompson, Charles N.....Indianapolis.
Thompson, Claude.....Crawfordsville.
Todd, Nelson K.....Bluffton.
Townley, Morris M.....Indianapolis.
Traylor, William A.....Jasper.
Turner, Perry L.....Elkhart.
Tuthill, Henry B.....Michigan City.
Van Vorhis, Flavius J.....Indianapolis.
Vaughn, Edwin C.....Bluffton.
Vesey, William J.....Fort Wayne.
Voight, George H.....Jeffersonville.
Walker, James T.....Evansville.
Walker, Lewis C.....Indianapolis.
Watson, Ward H.....Jeffersonville.
Waugh, Dan.....Tipton.
Weathers, Charles A.....Cannelton.

Welborn, Oscar M.....Princeton.
Welman, John D.....New Albany.
Wiley, Frederick H.....Indianapolis.
Wiley, Ulric Z.....Fowler.
Williams, David P.....Indianapolis.
Williams, John G.....Indianapolis.
Williamson, Joel E.....Evansville.
Wilson, James B.....Bloomington.
Wilson, John R.....Indianapolis.
Winter, Ferdinand.....Indianapolis.
Wishard, Albert W.....Indianapolis.
Wolf, Conrad.....Kokomo.
Wood, Alphonso C.....Angola.
Wood, Sol A.....Angola.
Woods, Floyd A.....Indianapolis.
Woods, William A.....Indianapolis.
Woollen, Evans.....Indianapolis.
Woollen, William Watson.....Indianapolis.
Worden, Charles H.....Fort Wayne.
Yeager, Henry A.....Princeton.
Youche, Julius W.....Crown Point.
Zion, Charles McCormack.....Lebanon.
Zollars, Allen.....Fort Wayne.

LIST OF MEMBERS BY CONGRESSIONAL DISTRICTS

FIRST DISTRICT: POSEY, GIBSON, VANDERBURG, WARRICK, PIKE AND SPENCER.

Gustavus V. Menzies	Mount Vernon	Posey.
Lucius C. Embree	Princeton	Gibson.
Martin W. Fields	Princeton	Gibson.
John H. Miller	Princeton	Gibson.
Thomas R. Paxton	Princeton	Gibson.
Woodfin D. Robinson	Princeton	Gibson.
Oscar M. Welborn	Princeton	Gibson.
Henry A. Yeager	Princeton	Gibson.
John R. Brill	Evansville	Vanderburg.
De Witt Q. Chappell	Evansville	Vanderburg.
Andrew J. Clark	Evansville	Vanderburg.
George A. Cunningham	Evansville	Vanderburg.
Curran A. De Bruler	Evansville	Vanderburg.
John H. Foster	Evansville	Vanderburg.
Philip W. Frey	Evansville	Vanderburg.
Alexander Gilchrist	Evansville	Vanderburg.
John E. Iglehart	Evansville	Vanderburg.
Hiram M. Logsdon	Evansville	Vanderburg.
Peter Maier	Evansville	Vanderburg.
Hamilton A. Mattison	Evansville	Vanderburg.
Frank B. Posey	Evansville	Vanderburg.
Robert D. Richardson	Evansville	Vanderburg.
John W. Spencer	Evansville	Vanderburg.
Edwin Taylor	Evansville	Vanderburg.
James T. Walker	Evansville	Vanderburg.
Joel E. Williamson	Evansville	Vanderburg.
Edward Gough	Boonville	Warrick.
Eugene A. Ely	Petersburg	Pike.
Edward P. Richardson	Petersburg	Pike.
Arthur H. Taylor	Petersburg	Pike.
Elbert M. Swan	Rockport	Spencer.

SECOND DISTRICT: KNOX, SULLIVAN, DAVIESS, GREENE, OWEN, MONROE, MARTIN AND LAWRENCE.

William H. De Wolf	Vincennes	Knox.
John S. Bays	Sullivan	Sullivan.
Lee Fenton Bays	Sullivan	Sullivan.
William W. Moffett	Bloomfield	Greene.
Thomas J. Brooks	Bedford	Lawrence.
William H. Martin	Bedford	Lawrence.
Luther U. Downey	Gosport	Owen.
Inman H. Fowler	Spencer	Owen.
Walter E. Hottel	Bloomington	Monroe.
John H. Louden	Bloomington	Monroe.
Theodore J. Louden	Bloomington	Monroe.
George L. Reinhard	Bloomington	Monroe.
William P. Rogers	Bloomington	Monroe.
James B. Wilson	Bloomington	Monroe.

THIRD DISTRICT: DUBOIS, ORANGE, CRAWFORD, PERRY, WASHINGTON, HARRISON, FLOYD, CLARK AND SCOTT.

George B. Cardwill	New Albany	Floyd.
Alexander Dowling	New Albany	Floyd.
Charles L. Jewett	New Albany	Floyd.
Evan B. Stotsenberg	New Albany	Floyd.
John D. Welman	New Albany	Floyd.
Charles A. Weathers	Cannelton	Perry.
James W. Fortune	Jeffersonville	Clark.
Melchert Z. Stannard	Jeffersonville	Clark.
George H. Voight	Jeffersonville	Clark.
Ward H. Watson	Jeffersonville	Clark.
Joseph H. Shea	Scottsburg	Scott.
Mark Storen	Scottsburg	Scott.
John L. Bretz	Jasper	Dubois.
William A. Traylor	Jasper	Dubois.

FOURTH DISTRICT: JACKSON, BROWN, BARTHOLOMEW, JENNINGS, DECATUR, RIPLEY, DEARBORN, OHIO, SWITZERLAND AND JEFFERSON.

Ralph Applewhite	Brownstown	Jackson.
Oscar H. Montgomery	Seymour	Jackson.
James F. Cox	Columbus	Bartholomew.
John W. Donaker	Columbus	Bartholomew.
Charles F. Remy	Columbus	Bartholomew.
Simeon Stansifer	Columbus	Bartholomew.
Willard New	Vernon	Jennings.
Lincoln Dixon	North Vernon	Jennings.
Francis Marion Griffith	Vevay	Switzerland.

Lucian Harris	Vevay	Switzerland.
George S. Pleasants	Vevay	Switzerland.
Carroll S. Tandy	Vevay	Switzerland.
David A. Myers	Greensburg	Decatur.
George E. Downey	Aurora	Dearborn.
Frank B. Shutts	Aurora	Dearborn.
Robert H. Colt	Lawrenceburg	Dearborn.
Noah S. Given	Lawrenceburg	Dearborn.
Wm. R. Johnston	Lawrenceburg	Dearborn.
Perry E. Bear	Madison	Jefferson.
Hiram Francisco	Madison	Jefferson.
Marcus R. Sulzer	Madison	Jefferson.

FIFTH DISTRICT: VIGO, VERMILLION, PARKE, CLAY, PUTNAM, HENDRICKS AND MORGAN.

John T. Beasley	Terre Haute	Vigo.
Adrian A. Beecher	Terre Haute	Vigo.
Sidney B. Davis	Terre Haute	Vigo.
Jacob D. Early	Terre Haute	Vigo.
Samuel R. Hamill	Terre Haute	Vigo.
David W. Henry	Terre Haute	Vigo.
Frank A. Kelley	Terre Haute	Vigo.
John E. Lamb	Terre Haute	Vigo.
Buena V. Marshall	Terre Haute	Vigo.
James E. Piety	Terre Haute	Vigo.
John O. Piety	Terre Haute	Vigo.
Silas D. Coffey	Brazil	Clay.
Fleura F. James	Newport	Vermillion.
Presley O. Colliver	Greencastle	Putnam.
Benjamin F. Corwin	Greencastle	Putnam.
Silas A. Hays	Greencastle	Putnam.
Henry C. Lewis	Greencastle	Putnam.
Henry H. Mathias	Greencastle	Putnam.
George W. Brill	Danville	Hendricks.
James L. Clark	Danville	Hendricks.
Thomas J. Cofer	Danville	Hendricks.
John V. Hadley	Danville	Hendricks.
George C. Harvey	Danville	Hendricks.
Enoch G. Hogate	Danville	Hendricks.
George W. Grubbs	Martinsville	Morgan.
James H. Jordan	Martinsville	Morgan.
John C. McNutt	Martinsville	Morgan.
Charles G. Renner	Martinsville	Morgan.
William S. Shirley	Martinsville	Morgan.

SIXTH DISTRICT: HANCOCK, SHELBY, HENRY, RUSH, WAYNE, FAYETTE, UNION AND FRANKLIN.

William Ward Cook	Greenfield	Hancock.
William R. Hough	Greenfield	Hancock.
Ephraim Marsh	Greenfield	Hancock.
Isaac Carter	Shelbyville	Shelby.
Kendall M. Hord	Shelbyville	Shelby.
Harry C. Morrison	Shelbyville	Shelby.
Leonidas P. Newby	Knightstown	Henry.
William J. Henley	Rushville	Rush.
Charles C. Binkley	Richmond	Wayne.
Daniel W. Comstock	Richmond	Wayne.
Richard A. Jackson	Richmond	Wayne.
Jesse S. Reeves	Richmond	Wayne.
John L. Rupe	Richmond	Wayne.
Charles E. Shively	Richmond	Wayne.
Harry C. Starr	Richmond	Wayne.

SEVENTH DISTRICT: MARION AND JOHNSON.

Henry Clay Allen	Indianapolis	Marion.
Samuel Ashby	Indianapolis	Marion.
Alex. C. Ayres	Indianapolis	Marion.
Leon O. Bailey	Indianapolis	Marion.
Charles E. Barrett	Indianapolis	Marion.
Pliny W. Bartholomew	Indianapolis	Marion.
George H. Batchelor	Indianapolis	Marion.
Albert J. Beveridge	Indianapolis	Marion.
James B. Black	Indianapolis	Marion.
Augustin Boice	Indianapolis	Marion.
Chester Bradford	Indianapolis	Marion.
Frank B. Burke	Indianapolis	Marion.
Noble C. Butler	Indianapolis	Marion.
John F. Carson	Indianapolis	Marion.
Vinson Carter	Indianapolis	Marion.
Smiley N. Chambers	Indianapolis	Marion.
John B. Cockrum	Indianapolis	Marion.
Chas. F. Coffin	Indianapolis	Marion.
Linton A. Cox	Indianapolis	Marion.
Frank C. Cutter	Indianapolis	Marion.
Edward Daniels	Indianapolis	Marion.
Guilford A. Deitch	Indianapolis	Marion.
Caleb S. Denny	Indianapolis	Marion.
Henry M. Dowling	Indianapolis	Marion.
Chas. A. Dryer	Indianapolis	Marion.
John S. Duncan	Indianapolis	Marion.

John T. Dye	Indianapolis	Marion.
Byron K. Elliott	Indianapolis	Marion.
Wm. F. Elliott	Indianapolis	Marion.
Rowland Evans	Indianapolis	Marion.
Louis B. Ewbank	Indianapolis	Marion.
James W. Fesler	Indianapolis	Marion.
Wm. P. Fishback	Indianapolis	Marion.
Frank E. Gavin	Indianapolis	Marion.
John L. Griffiths	Indianapolis	Marion.
Leonard J. Hackney	Indianapolis	Marion.
Cassius C. Hadley	Indianapolis	Marion.
Levi P. Harlan	Indianapolis	Marion.
Addison C. Harris	Indianapolis	Marion.
Benjamin Harrison	Indianapolis	Marion.
Lawson M. Harvey,	Indianapolis	Marion.
Aretas W. Hatch	Indianapolis	Marion.
Roscoe O. Hawkins	Indianapolis	Marion.
Wm. Pirtle Herod	Indianapolis	Marion.
Charles L. Holstein	Indianapolis	Marion.
Ovid B. Jameson	Indianapolis	Marion.
Frederick A. Joss	Indianapolis	Marion.
Wm. P. Kappes	Indianapolis	Marion.
John W. Kern	Indianapolis	Marion.
Wm. A. Ketcham	Indianapolis	Marion.
Jesse J. M. LaFollette	Indianapolis	Marion.
Virgil H. Lockwood	Indianapolis	Marion.
Charles Martindale	Indianapolis	Marion.
Frederick E. Matson	Indianapolis	Marion.
Robert W. McBride	Indianapolis	Marion.
James E. McCullough	Indianapolis	Marion.
John L. McMaster	Indianapolis	Marion.
William H. H. Miller	Indianapolis	Marion.
James L. Mitchell	Indianapolis	Marion.
Charles W. Moores	Indianapolis	Marion.
Merrill Moores	Indianapolis	Marion.
Nathan Morris	Indianapolis	Marion.
Frank W. Morrison	Indianapolis	Marion.
Louis Newberger	Indianapolis	Marion.
James W. Noel	Indianapolis	Marion.
Lafayette Perkins	Indianapolis	Marion.
Samuel O. Pickens	Indianapolis	Marion.
Wm. A. Pickens	Indianapolis	Marion.
Albert Rabb	Indianapolis	Marion.
Francis J. Reinhard	Indianapolis	Marion.
Eli F. Ritter	Indianapolis	Marion.
James A. Rohbach	Indianapolis	Marion.

Alonzo Greene Smith	Indianapolis	Marion.
Charles W. Smith	Indianapolis	Marion.
Horace E. Smith	Indianapolis	Marion.
Ambrose P. Stanton	Indianapolis	Marion.
Harold Taylor	Indianapolis	Marion.
Wm. L. Taylor	Indianapolis	Marion.
Hiram Teter	Indianapolis	Marion.
Charles N. Thompson	Indianapolis	Marion.
Morris M. Townley	Indianapolis	Marion.
Flavius J. Van Vorhis	Indianapolis	Marion.
Lewis C. Walker	Indianapolis	Marion.
Frederick H. Wiley	Indianapolis	Marion.
David P. Williams	Indianapolis	Marion.
John G. Williams	Iudianapolis	Marion.
John R. Wilson	Indianapolis	Marion.
Ferdinand Winter	Indianapolis	Marion.
Albert W. Wishard	Indianapolis	Marion.
Floyd A. Woods	Indianapolis	Marion.
Wm. A. Woods	Indianapolis	Marion.
Evans Woollen	Indianapolis	Marion.
Wm. Watson Woollen	Indianapolis	Marion.

EIGHTH DISTRICT: MADISON, DELAWARE, RANDOLPH, JAY, BLACKFORD, WELLS AND ADAMS.

Michael J. Clancy	Elwood	Madison.
Marcellus A. Chipman	Anderson	Madison.
Wm. S. Diven	Anderson	Madison.
Frank P. Foster	Anderson	Madison.
Fred E. Holloway	Anderson	Madison.
Edward D. Reardon	Anderson	Madison.
James W. Sansberry	Anderson	Madison.
James Bingham	Muncie	Delaware.
Arthur W. Brady	Muncie	Delaware.
George H. Koons	Muncie	Delaware.
Orlando J. Lotz	Muncie	Delaware.
Jesse R. Long	Muncie	Delaware.
Albert O. Marsh	Winchester	Randolph.
Leander J. Monks	Winchester	Randolph.
Clark J. Lutz	Decatur	Adams.
Dell Dragoo	Redkey	Jay.
Richard H. Hartford	Portland	Jay.
Sumner W. Haynes	Portland	Jay.
John W. Headington	Portland	Jay.
Emerson E. McGriff	Portland	Jay.
John M. Smith	Portland	Jay.
David T. Taylor	Portland	Jay.

Jay A. Hindman	Hartford City	Blackford.
Joseph S. Dailey	Bluffton	Wells.
William H. Eichhorn	Bluffton	Wells.
Arthur L. Sharpe	Bluffton	Wells.
Abram Simmons	Bluffton	Wells.
Nelson K. Todd	Bluffton	Wells.
Edwin C. Vaughn	Bluffton	Wells.

NINTH DISTRICT: FOUNTAIN, MONTGOMERY, BOONE, CLINTON, CARROLL, TIPTON AND HAMILTON.

Charles M. McCabe	Covington	Fountain.
Benjamin Crane	Crawfordsville	Montgomery.
Claude Thompson	Crawfordsville	Montgomery.
Samuel R. Artman	Lebanon	Boone.
Samuel M. Ralston	Lebanon	Boone.
Charles McCormack Zion	Lebanon	Boone.
Braden Clark	Frankfort	Clinton.
James W. Morrison	Frankfort	Clinton.
Harry C. Sheridan	Frankfort	Clinton.
John H. Gould	Delphi	Carroll.
Wm. C. Smith	Delphi	Carroll.
Robert B. Beauchamp	Tipton	Tipton.
Edward Daniels	Tipton	Tipton.
George H. Gifford	Tipton	Tipton.
Walter W. Mount	Tipton	Tipton.
Leroy B. Nash	Tipton	Tipton.
Richard H. Proctor	Tipton	Tipton.
Dan Waugh	Tipton	Tipton.
Theo. P. Davis	Noblesville	Hamilton.
Ralph Kent Kane	Noblesville	Hamilton.
John F. Neal	Noblesville	Hamilton.

TENTH DISTRICT: WARREN, TIPPECANOE, WHITE, BENTON, NEWTON, JASPER, LAKE, PORTER AND LAPORTE.

Samuel P. Baird	Lafayette	Tippecanoe.
Edwin P. Hammond	Lafayette	Tippecanoe.
Dan W. Simms	Lafayette	Tippecanoe.
Daniel E. Storms	Lafayette	Tippecanoe.
Wm. V. Stuart	Lafayette	Tippecanoe.
Nathan L. Agnew	Valparaiso	Porter.
Daniel E. Kelly	Valparaiso	Porter.
George C. Palmer	Monticello	White.
Truman F. Palmer	Monticello	White.
Chas. C. Spencer	Monticello	White.
Frank A. Comparet	Kentland	Jasper.

William Cummings	Kentland	Jasper.
William Darroch	Kentland	Jasper.
William B. Austin	Rensselaer	Jasper.
Frank Foltz	Rensselaer	Jasper.
Joseph G. Ibach	Hammond	Lake.
Daniel J. Moran	Hammond	Lake.
Virgil S. Reiter	Hammond	Lake.
John B. Peterson	Crown Point	Lake.
Julius W. Youche	Crown Point	Lake.
Jeremiah B. Collins	Michigan City	Laporte.
Henry B. Tuthill	Michigan City	Laporte.
Mortimer Nye	Laporte	Laporte.
Charles B. McAdams	Williamsport	Warren.
Ele Stansbury	Williamsport	Warren.
Ulric Z. Wiley	Fowler	Benton.

ELEVENTH DISTRICT: CASS, MIAMI, HOWARD, GRANT, WABASH AND HUNTINGTON.

George W. Funk	Logansport	Cass.
Rufus Magee	Logansport	Cass.
Quincy A. Myers	Logansport	Cass.
George E. Ross	Logansport	Cass.
Nathan O. Ross	Logansport	Cass.
John C. Nelson	Logansport	Cass.
Jabez T. Cox	Peru	Miami.
Milton Kraus	Peru	Miami.
John W. O'Hara	Peru	Miami.
Milton Bell	Kokomo	Howard.
James C. Blacklidge	Kokomo	Howard.
James F. Elliott	Kokomo	Howard.
Lex J. Kirkpatrick	Kokomo	Howard.
James F. Morrison	Kokomo	Howard.
William C. Overton	Kokomo	Howard.
William C. Purdum	Kokomo	Howard.
Cassius C. Shirley	Kokomo	Howard.
Conrad Wolf	Kokomo	Howard.
Hiram Brownlee	Marion	Grant.
Joseph L. Custer	Marion	Grant.
Henry J. Paulus	Marion	Grant.
Oliver H. Bogue	Wabash	Wabash.
James D. Conner, Jr	Wabash	Wabash.
Henry C. Pettit	Wabash	Wabash.
Harvey B. Shively	Wabash	Wabash.
Thomas L. Stitt	Wabash	Wabash.
Ulysses S. Lesh	Huntington	Wabash.
Henry C. Morgan	Huntington	Wabash.
Maurice L. Spencer	Huntington	Wabash.

TWELFTH DISTRICT: WHITLEY, ALLEN, NOBLE, DEKALB, STEUBEN AND LAGRANGE.

Andrew A. Adams	Columbia City	Whitley.
Ephraim K. Strong	Columbia City	Whitley.
James M. Barrett	Fort Wayne	Allen.
Robert C. Bell	Fort Wayne	Allen.
William P. Breen	Fort Wayne	Allen.
Augustus A. Chapin	Fort Wayne	Allen.
William E. Clapham	Fort Wayne	Allen.
Henry Colerick	Fort Wayne	Allen.
Walpole G. Colerick	Fort Wayne	Allen.
Robert B. Dreibelbiss	Fort Wayne	Allen.
Thomas E. Ellison	Fort Wayne	Allen.
Robert B. Hanna	Fort Wayne	Allen.
James B. Harper	Fort Wayne	Allen.
Owen N. Heaton	Fort Wayne	Allen.
Samuel M. Hench	Fort Wayne	Allen.
Hugh G. Keegan	Fort Wayne	Allen.
Elmer Leonard	Fort Wayne	Allen.
Wilmer Leonard	Fort Wayne	Allen.
Robert Lowry	Fort Wayne	Allen.
John Morris, Jr.	Fort Wayne	Allen.
Samuel L. Morris	Fort Wayne	Allen.
William H. Shambaugh	Fort Wayne	Allen.
Robert S. Taylor	Fort Wayne	Allen.
William T. Vesey	Fort Wayne	Allen.
Charles N. Worden	Fort Wayne	Allen.
Allen Zollars	Fort Wayne	Allen.
Wm. L. Penfield	Auburn	Dekalb.
Frank S. Roby	Auburn	Dekalb.
James E. Rose	Auburn	Dekalb.
James H. Rose	Auburn	Dekalb.
Emmet A. Bratton	Angola	Steuben.
Cyrus Cline	Angola	Steuben.
Newton W. Gilbert	Angola	Steuben.
Frank M. Powers	Angola	Steuben.
Alphonso C. Wood	Angola	Steuben.
Sol A. Wood	Angola	Steuben.
Otis L. Ballou	Lagrange	Lagrange.

THIRTEENTH DISTRICT: PULASKI, STARKE, ST. JOSEPH, ELKHART, MARSHALL, KOSCIUSKO AND FULTON.

Andrew Anderson	South Bend	St. Joseph.
George E. Clarke	South Bend	St. Joseph.
Frank H. Dunahoo	South Bend	St. Joseph.

George Ford	South Bend	St. Joseph.
Walter A. Funk	South Bend	St. Joseph.
Jacob D. Henderson	South Bend	St. Joseph.
Timothy E. Howard	South Bend	St. Joseph.
Francis M. Jackson	South Bend	St. Joseph.
Francis E. Lambert	South Bend	St. Joseph.
Stuart MacKibbin	South Bend	St. Joseph.
Dudley M. Shively	South Bend	St. Joseph.
Francis E. Baker	Goshen	Elkhart.
John H. Baker	Goshen	Elkhart.
Anthony Deahl	Goshen	Elkhart.
James S. Drake	Goshen	Elkhart.
Chas. W. Miller	Goshen	Elkhart.
Perry L. Turner	Elkhart	Elkhart.
Charles P. Drummond	Plymouth	Marshall.
Samuel Parker	Plymouth	Marshall.
Lemuel W. Royse	Warsaw	Kosciusko.

LIST OF MEMBERS BY JUDICIAL CIRCUITS

FIRST CIRCUIT: VANDERBURG.

John R. Brill.....Evansville.
DeWitt Q. Chappell.....Evansville.
Andrew J. Clark.....Evansville.
George A. Cunningham.....Evansville.
Curran A. DeBruler.....Evansville.
John H. Foster.....Evansville.
Philip W. Frey.....Evansville.
Alexander Gilchrist.....Evansville.
John E. Iglehart.....Evansville.
Hiram M. Logsdon.....Evansville.
Peter Maier.....Evansville.
Hamilton A. Mattison.....Evansville.
Frank B. Posey.....Evansville.
Robert D. Richardson.....Evansville.
John W. Spencer.....Evansville.
Edwin Taylor.....Evansville.
James T. Walker.....Evansville.
Joel E. Williamson.....Evansville.

SECOND CIRCUIT: SPENCER, PERRY AND WARRICK.

Elbert M. Swan.....Rockport.
Edward Gough.....Boonville.
Charles A. Weathers.....Cannelton.

THIRD CIRCUIT: HARRISON AND CRAWFORD.

FOURTH CIRCUIT: CLARK.

James W. Fortune.....Jeffersonville.
Melchert Z. Stannard.....Jeffersonville.
George H. Voight.....Jeffersonville.
Ward H. Watson.....Jeffersonville.

FIFTH CIRCUIT: JEFFERSON AND SWITZERLAND.

Perry E. Bear.....Madison.
Hiram Francisco.....Madison.
Marcus R. Sulzer.....Madison.

Francis Marion Griffith.....Vevay.
Lucian Harris.....Vevay.
George S. Pleasants.....Vevay.
Carroll S. Tandy.....Vevay.

SIXTH CIRCUIT: RIPLEY, JENNINGS AND SCOTT.

Lincoln Dixon.....North Vernon.
Willard New.....Vernon.
Joseph H. Shea.....Scottsburg.
Mark Storen.....Scottsburg.

SEVENTH CIRCUIT: OHIO AND DEARBORN.

Robert H. Colt.....Lawrenceburg.
Noah S. Given.....Lawrenceburg.
William R. Johnston.....Lawrenceburg.
George E. Downey.....Aurora.
Frank B. Shutts.....Aurora.

EIGHTH CIRCUIT: JOHNSON AND BROWN.

NINTH CIRCUIT: BARTHOLOMEW AND DECATUR.

James F. Cox.....Columbus.
John W. Donaker.....Columbus.
Charles F. Remy.....Columbus.
Simeon Stansifer.....Columbus.
David A. Myers.....Greensburg.

TENTH CIRCUIT: LAWRENCE AND MONROE.

Walter E. Hottel.....Bloomington.
John H. Louden.....Bloomington.
Theodore J. Louden.....Bloomington.
George L. Reinhard.....Bloomington.
Wm. P. Rogers.....Bloomington.
James B. Wilson.....Bloomington.
Thomas J. Brooks.....Bedford.
William H. Martin.....Bedford.

ELEVENTH CIRCUIT: GIBSON AND POSEY.

Gustavus V. Menzies.....Mount Vernon.
Lucius C. Embree.....Princeton.
Martin W. Fields.....Princeton.
John H. Miller.....Princeton.
Thomas R. Paxton.....Princeton.
Woodfin D. Robinson.....Princeton.
Oscar M. Welborn.....Princeton.
Henry A. Yeager.....Princeton.

TWELFTH CIRCUIT: KNOX.

Wm. H. DeWolf.....Vincennes.

THIRTEENTH CIRCUIT: CLAY AND PUTNAM.

Silas D. Coffey.....Brazil.
Presley O. Colliver.....Greencastle.
Benjamin F. Corwin.....Greencastle.
Silas A. Hays.....Greencastle.
Henry C. Lewis.....Greencastle.
Henry H. Mathias.....Greencastle.

FOURTEENTH CIRCUIT: GREENE AND SULLIVAN.

John S. Bays.....Sullivan.
Lee Fenton Bays.....Sullivan.
Wm. W. Moffett.....Bloomfield.

FIFTEENTH CIRCUIT: OWEN AND MORGAN.

Luther U. Downey.....Gosport.
Inman H. Fowler.....Spencer.
George W. Grubbs.....Martinsville.
James H. Jordan.....Martinsville.
John C. McNutt.....Martinsville.
Charles G. Renner.....Martinsville.
Wm. S. Shirley.....Martinsville.

SIXTEENTH CIRCUIT: RUSH AND SHELBY.

Isaac Carter.....Shelbyville.
Kendall M. Hord.....Shelbyville.
Harry C. Morrison.....Shelbyville.
Wm. J. Henley.....Rushville.

SEVENTEENTH CIRCUIT: WAYNE.

Charles C. Binkley.....Richmond.
Daniel W. Comstock.....Richmond.
Richard A. Jackson.....Richmond.
Jesse S. Reeves.....Richmond.
John L. Rupe.....Richmond.
Charles E. Shively.....Richmond.
Harry C. Starr.....Richmond.

EIGHTEENTH CIRCUIT: HANCOCK.

William Ward Cook.....Greenfield.
William R. Hough.....Greenfield.
Ephraim Marsh.....Greenfield.

NINETEENTH CIRCUIT: MARION.

Henry Clay Allen.....Indianapolis.
Samuel Ashby.....Indianapolis.
Alexander C. Ayres.....Indianapolis.
Leon O. Bailey.....Indianapolis.
Charles E. Barrett.....Indianapolis.
Pliny W. Bartholomew.....Indianapolis.
George H. Batchelor.....Indianapolis.
Albert J. Beveridge.....Indianapolis.
James B. Black.....Indianapolis.
Augustin Boice.....Indianapolis.
Chester Bradford.....Indianapolis.
Frank B. Burke.....Indianapolis.
Noble C. Butler.....Indianapolis.
John F. Carson.....Indianapolis.
Vinson Carter.....Indianapolis.
Smiley N. Chambers.....Indianapolis.
John B. Cockrum.....Indianapolis.
Charles F. Coffin.....Indianapolis.
Frank C. Cutter.....Indianapolis.
Edward Daniels.....Indianapolis.
Guilford A. Deitch.....Indianapolis.
Caleb S. Denny.....Indianapolis.
Henry M. Dowling.....Indianapolis.
Charles A. Dryer.....Indianapolis.
John S. Duncan.....Indianapolis.
John T. Dye.....Indianapolis.
Wm. H. Dye.....Indianapolis.
Byron K. Elliott.....Indianapolis.
Wm. F. Elliott.....Indianapolis.
Rowland Evans.....Indianapolis.
Louis B. Ewbank.....Indianapolis.
James W. Fesler.....Indianapolis.
William P. Fishback.....Indianapolis.
Frank E. Gavin.....Indianapolis.
John L. Griffiths.....Indianapolis.
Leonard J. Hackney.....Indianapolis.
Cassius C. Hadley.....Indianapolis.
Levi P. Harlan.....Indianapolis.
Addison C. Harris.....Indianapolis.
Benjamin Harrison.....Indianapolis.
Lawson M. Harvey.....Indianapolis.
Aretas W. Hatch.....Indianapolis.
Roscoe O. Hawkins.....Indianapolis.
William Pirtle Herod.....Indianapolis.
Charles L. Holstein.....Indianapolis.

Ovid B. Jameson ..... Indianapolis.
Frederick A. Joss ..... Indianapolis.
William P. Kappes ..... Indianapolis.
John W. Kern ..... Indianapolis.
William A. Ketcham ..... Indianapolis.
Jesse J. M. LaFollette ..... Indianapolis.
Virgil H. Lockwood ..... Indianapolis.
Charles Martindale ..... Indianapolis.
Frederick E. Matson ..... Indianapolis.
Robert W. McBride ..... Indianapolis.
James E. McCullough ..... Indianapolis.
John L. McMaster ..... Indianapolis.
James L. Mitchell ..... Indianapolis.
Charles W. Moores ..... Indianapolis.
Merrill Moores ..... Indianapolis.
Nathan Morris ..... Indianapolis.
Frank W. Morrison ..... Indianapolis.
Louis Newberger ..... Indianapolis.
James W. Noel ..... Indianapolis.
Lafayette Perkins ..... Indianapolis.
Samuel O. Pickens ..... Indianapolis.
William A. Pickens ..... Indianapolis.
Albert Rabb ..... Indianapolis.
Francis J. Reinhard ..... Indianapolis.
Eli F. Ritter ..... Indianapolis.
James A. Rohbach ..... Indianapolis.
Alonzo G. Smith ..... Indianapolis.
Charles W. Smith ..... Indianapolis.
Horace E. Smith ..... Indianapolis.
Ambrose P. Stanton ..... Indianapolis.
Harold Taylor ..... Indianapolis.
Wm. L. Taylor ..... Indianapolis.
Hiram Teter ..... Indianapolis.
Charles N. Thompson ..... Indianapolis.
Morris M. Townley ..... Indianapolis.
Flavius J. Van Vorhis ..... Indianapolis.
Lewis C. Walker ..... Indianapolis.
Frederick H. Wiley ..... Indianapolis.
David P. Williams ..... Indianapolis.
John G. Williams ..... Indianapolis.
John R. Wilson ..... Indianapolis.
Ferdinand Winter ..... Indianapolis.
Albert W. Wishard ..... Indianapolis.
Floyd A. Woods ..... Indianapolis.
William A. Woods ..... Indianapolis.
Evans Woollen ..... Indianapolis.
William Watson Woollen ..... Indianapolis.

TWENTIETH CIRCUIT: BOONE.

Samuel R. Artman.....Lebanon.
Samuel M. Ralston.....Lebanon.
Charles McCormack Zion.....Lebanon.

TWENTY-FIRST CIRCUIT: BENTON, WARREN AND FOUNTAIN.

Ulric Z. Wiley.....Fowler.
Charles M. McCabe.....Covington.
Charles B. McAdams.....Williamsport.
Ele Stansbury.....Williamsport.

TWENTY-SECOND CIRCUIT: MONTGOMERY.

Benjamin Crane.....Crawfordsville.
Claude Thompson.....Crawfordsville.

TWENTY-THIRD CIRCUIT: TIPPECANOE.

Samuel P. Baird.....Lafayette.
Edwin P. Hammond.....Lafayette.
Dan W. Simms.....Lafayette.
Daniel E. Storms.....Lafayette.
William V. Stuart.....Lafayette.

TWENTY-FOURTH CIRCUIT: HAMILTON.

Theodore P. Davis.....Noblesville.
Ralph Kent Kane.....Noblesville.
John F. Neal.....Noblesville.

TWENTY-FIFTH CIRCUIT: RANDOLPH.

Albert O. Marsh.....Winchester.
Leander J. Monks.....Winchester.

TWENTY-SIXTH CIRCUIT: ADAMS.

Clark J. Lutz.....Decatur.

TWENTY-SEVENTH CIRCUIT: WABASH.

Oliver H. Bogue.....Wabash.
James D. Conner, Jr.....Wabash.
Henry C. Pettit.....Wabash.
Harvey B. Shively.....Wabash.
Thomas L. Stitt.....Wabash.

TWENTY-EIGHTH CIRCUIT: WELLS AND BLACKFORD.

Jay A. Hindman.....Hartford City.

Joseph S. Dailey ..... Bluffton.
Wm. H. Eichhorn ..... Bluffton.
Arthur L. Sharpe ..... Bluffton.
Abram Simmons ..... Bluffton.
Nelson K. Todd ..... Bluffton.
Edwin C. Vaughn ..... Bluffton.

TWENTY-NINTH CIRCUIT: CASS.

George W. Funk ..... Logansport.
Rufus Magee ..... Logansport.
Quincy A. Myers ..... Logansport.
John C. Nelson ..... Logansport.
George E. Ross ..... Logansport.
Nathan O. Ross ..... Logansport.

THIRTIETH CIRCUIT: JASPER AND NEWTON.

William B. Austin ..... Rensselaer.
Frank Foltz ..... Rensselaer.
Frank Comparet ..... Kentland.
William Cummings ..... Kentland.
William Darroch ..... Kentland.

THIRTY-FIRST CIRCUIT: LAKE AND PORTER.

Joseph G. Ibach ..... Hammond.
Daniel J. Moran ..... Hammond.
Virgil S. Reiter ..... Hammond.
John B. Peterson ..... Crown Point.
Julius W. Youche ..... Crown Point.
Nathan L. Agnew ..... Valparaiso.
Daniel E. Kelly ..... Valparaiso.

THIRTY-SECOND CIRCUIT: LAPORTE.

Mortimer Nye ..... Laporte.
Jeremiah B. Collins ..... Michigan City.
Henry B. Tuthill ..... Michigan City.

THIRTY-THIRD CIRCUIT: WHITLEY AND NOBLE.

Andrew A. Adams ..... Columbia City.
Ephraim K. Strong ..... Columbia City.

THIRTY-FOURTH CIRCUIT: LAGRANGE AND ELKHART.

Otis L. Ballou ..... Lagrange.
Francis E. Baker ..... Goshen.
John H. Baker ..... Goshen.
Anthony Deahl ..... Goshen.
James S. Drake ..... Goshen.

Charles W. Miller.....Goshen.
Perry L. Turner.....Elkhart.

THIRTY-FIFTH CIRCUIT: DEKALB AND STEUBEN.

Emmet A. Bratton.....Angola.
Cyrus Cline.....Angola.
Newton W. Gilbert.....Angola.
Frank M. Powers.....Angola.
Alphonso C. Wood.....Angola.
Sol A. Wood.....Angola.
Wm. L. Penfield.....Auburn.
Frank S. Roby.....Auburn.
James E. Rose.....Auburn.
James H. Rose.....Auburn.

THIRTY-SIXTH CIRCUIT: HOWARD AND TIPTON.

Milton Bell.....Kokomo.
James C. Blacklidge.....Kokomo.
James F. Elliott.....Kokomo.
Lex J. Kirkpatrick.....Kokomo.
James F. Morrison.....Kokomo.
Wm. C. Overton.....Kokomo.
William C. Purdum.....Kokomo.
Cassius C. Shirley.....Kokomo.
Conrad Wolf.....Kokomo.
Robert B. Beauchamp.....Tipton.
Edward Daniels.....Tipton.
George H. Gifford.....Tipton.
Walter W. Mount.....Tipton.
Leroy B. Nash.....Tipton.
Richard H. Proctor.....Tipton.
Dan Waugh.....Tipton.

THIRTY-SEVENTH CIRCUIT: FAYETTE, UNION AND FRANKLIN.

THIRTY-EIGHTH CIRCUIT: ALLEN.

James M. Barrett.....Fort Wayne.
Robert C. Bell.....Fort Wayne.
Wm. P. Breen.....Fort Wayne.
Augustus A. Chapin.....Fort Wayne.
Wm. E. Clapham.....Fort Wayne.
Henry Colerick.....Fort Wayne.
Walpole G. Colerick.....Fort Wayne.
Robert Dreibelbiss.....Fort Wayne.
Thomas E. Ellison.....Fort Wayne.
Robert B. Hanna.....Fort Wayne.

James B. Harper ..... Fort Wayne.
Owen N. Heaton ..... Fort Wayne.
Samuel M. Hench ..... Fort Wayne.
Hugh G. Keegan ..... Fort Wayne.
Elmer Leonard ..... Fort Wayne.
Wilmer Leonard ..... Fort Wayne.
Robert Lowry ..... Fort Wayne.
John Morris, Jr ..... Fort Wayne.
Samuel L. Morris ..... Fort Wayne.
William H. Shambaugh ..... Fort Wayne.
Robert S. Taylor ..... Fort Wayne.
William J. Vesey ..... Fort Wayne.
Charles H. Worden ..... Fort Wayne.
Allen Zollars ..... Fort Wayne.

THIRTY-NINTH CIRCUIT: WHITE AND CARROLL.

George C. Palmer ..... Monticello.
Truman F. Palmer ..... Monticello.
Charles C. Spencer ..... Monticello.
John H. Gould ..... Delphi.
William C. Smith ..... Delphi.

FORTY-FIRST CIRCUIT: FULTON AND MARSHALL.

Charles P. Drummond ..... Plymouth.
Samuel Parker ..... Plymouth.

FORTY-SECOND CIRCUIT: JACKSON, WASHINGTON AND ORANGE.

Ralph Applewhite ..... Brownstown.
Oscar H. Montgomery ..... Seymour.

FORTY-THIRD CIRCUIT: VIGO.

John T. Beasley ..... Terre Haute.
Adrian A. Beecher ..... Terre Haute.
Sidney B. Davis ..... Terre Haute.
Jacob D. Early ..... Terre Haute.
Samuel R. Hamill ..... Terre Haute.
David W. Henry ..... Terre Haute.
Frank A. Kelley ..... Terre Haute.
John E. Lamb ..... Terre Haute.
Buena V. Marshall ..... Terre Haute.
James E. Piety ..... Terre Haute.
John O. Piety ..... Terre Haute.

FORTY-FOURTH CIRCUIT: STARKE AND PULASKI.

FORTY-FIFTH CIRCUIT: CLINTON.

Braden Clark.....Frankfort.
James W. Morrison.....Frankfort.
Harry C. Sheridan.....Frankfort.

FORTY-SIXTH CIRCUIT: DELAWARE.

James Bingham.....Muncie.
Arthur W. Brady.....Muncie.
George H. Koons.....Muncie.
Orlando J. Lotz.....Muncie.
Jesse R. Long.....Muncie.

FORTY-SEVENTH CIRCUIT: VERMILLION AND PARKE.

Fleura F. James.....Newport.

FORTY-EIGHTH CIRCUIT: GRANT.

Hiram Brownlee.....Marion.
Joseph L. Custer.....Marion.
Henry J. Paulus.....Marion.

FORTY-NINTH CIRCUIT: DAVIESS AND MARTIN.

FIFTIETH CIRCUIT: MADISON.

Michael J. Clancy.....Elwood.
Marcellus A. Chipman.....Anderson.
William S. Diven.....Anderson.
Frank P. Foster.....Anderson.
Fred E. Holloway.....Anderson.
Edward D. Reardon.....Anderson.
James W. Sansberry.....Anderson.

FIFTY-FIRST CIRCUIT: MIAMI.

Jabez T. Cox.....Peru.
Milton Kraus.....Peru.
John W. O'Hara.....Peru.

FIFTY-SECOND CIRCUIT: FLOYD.

George B. Cardwill.....New Albany.
Alexander Dowling.....New Albany.
Charles L. Jewett.....New Albany.
Evan B. Stotsenberg.....New Albany.
John D. Welman.....New Albany.

FIFTY-THIRD CIRCUIT: HENRY.

Leonidas P. Newby.....Knightstown.

FIFTY-FOURTH CIRCUIT: KOSCIUSKO.

Lemuel W. Royse.....Warsaw.

FIFTY-FIFTH CIRCUIT: HENDRICKS.

George W. Brill.....Danville.
James L. Clark.....Danville.
Thomas J. Cofer.....Danville.
John V. Hadley.....Danville.
George C. Harvey.....Danville.
Enoch G. Hogate.....Danville.

FIFTY-SIXTH CIRCUIT: HUNTINGTON.

Ulysses S. Lesh.....Huntington.
Henry C. Morgan.....Huntington.
Maurice L. Spencer.....Huntington.

FIFTY-SEVENTH CIRCUIT: DUBOIS AND PIKE.

John L. Bretz.....Jasper.
William A. Traylor.....Jasper.
Thomas H. Dillon.....Petersburg.
Eugene A. Ely.....Petersburg.
Edward P. Richardson.....Petersburg.
Arthur H. Taylor.....Petersburg.

FIFTY-EIGHTH CIRCUIT: JAY.

Dell Dragoo.....Redkey.
Richard H. Hartford.....Portland.
Sumner W. Haynes.....Portland.
John W. Headington.....Portland.
Emerson E. McGriff.....Portland.
John M. Smith.....Portland.
David T. Taylor.....Portland.

SIXTIETH CIRCUIT: ST. JOSEPH.

Andrew Anderson.....South Bend.
George E. Clarke.....South Bend.
Frank H. Dunnahoo.....South Bend.
George Ford.....South Bend.
Walter A. Funk.....South Bend.
Jacob D. Henderson.....South Bend.
Timothy E. Howard.....South Bend.
Francis M. Jackson.....South Bend.
Francis E. Lambert.....South Bend.
Stuart MacKibbin.....South Bend.
Dudley M. Shively.....South Bend.

INDEX